

**FISCAL YEAR 2012
MONITORING REPORT
ON THE
NEW YORK
ADULT CAREER AND CONTINUING
EDUCATION SERVICES
VOCATIONAL REHABILITATION
PROGRAM**



**U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND
REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION**

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SECTION 1: EXECUTIVE SUMMARY

Background

Section 107 of the Rehabilitation Act of 1973, as amended (Rehabilitation Act), requires the commissioner of the Rehabilitation Services Administration (RSA) to conduct annual reviews and periodic on-site monitoring of programs authorized under Title I of the Rehabilitation Act to determine whether a state vocational rehabilitation (VR) agency is complying substantially with the provisions of its State Plan under section 101 of the Rehabilitation Act and with the evaluation standards and performance indicators established under Section 106. In addition, the commissioner must assess the degree to which VR agencies are complying with the assurances made in the State Plan Supplement for Supported Employment (SE) Services under Title VI, part B, of the Rehabilitation Act.

Through monitoring of the VR and SE programs administered by the New York Office of Adult Career and Continuing Education Services (ACCES) in fiscal year (FY) 2012, RSA:

- reviewed the VR agency's progress toward implementing recommendations and resolving findings identified during the prior monitoring cycle (FY 2007 through FY 2010);
- reviewed the VR agency's performance in assisting eligible individuals with disabilities to achieve high-quality employment outcomes;
- recommended strategies to improve performance and required corrective actions in response to compliance findings related to three focus areas as warranted, including:
 - organizational structure requirements of the designated state agency, New York State Education Department and the designated state unit ACCES;
 - transition services and employment outcomes for youth with disabilities; and
 - the fiscal integrity of the VR program;
- identified emerging practices related to the three focus areas and other aspects of the VR agency's operations; and
- provided technical assistance to the VR agency to enable it to enhance its performance and to resolve findings of noncompliance.

The nature and scope of this review and the process by which RSA carried out its monitoring activities, including the conduct of an on-site visit from December 12 – 16, 2011, is described in detail in the [FY 2012 Monitoring and Technical Assistance Guide for the Vocational Rehabilitation Program](#).

Emerging Practices

Through the course of its review, RSA collaborated with ACCES, the State Rehabilitation Council (SRC), the Northeast Region 2 Technical Assistance and Continuing Education (TACE)

center, and other stakeholders to identify the emerging practices below implemented by the agency to improve the performance and administration of the VR program.

Improvement of Employment Outcomes, Including Supported Employment and Self-Employment

- **Supported Employment Information Directory:** The directory provides information about supported employment providers and is made available to VR counselors and consumers to assist in the selection of the most appropriate provider.
- **Workforce Development and Business Relations Team:** The team is aligned with the Council of State Administrators of Vocational Rehabilitation national employment team. ACCES promotes a single brand identity across the statewide network and the regional and local networks.

A more complete description of these practices can be found in Section 3 of this report.

Summary of Observations

RSA's review of ACCES resulted in the observation related to the focus area identified below. The entire observation and the recommendations made by RSA that the agency can undertake to improve its performance are contained in Section 5 of this report.

Transition Services and Employment Outcomes for Youth with Disabilities

- Although the number of youth with disabilities who achieved employment increased from FY 2006 to FY 2010, ACCES experienced a decline in the percentage of youth who achieved an employment outcome when compared to all youth who requested services and exited the VR program from FY 2008 to FY 2010. During the same period, the employment rate and quality of employment outcomes also declined. However, the quality of employment achieved for youth served by ACCES was greater than or comparable to the national average for other general agencies. This performance may have resulted, in part, from the provision of relatively fewer services to transition age youth when compared to those provided by all other general agencies, as well as the failure to appropriately code services funded or provided by ACCES.

Summary of Compliance Findings

RSA's review resulted in the identification of the compliance findings specified below. The complete findings and the corrective actions that ACCES must undertake to bring itself into compliance with pertinent legal requirements are contained in Section 6 of this report.

- ACCES is not in compliance with its state-established standard for development of the individualized plan for employment (IPE) for transition-age youth.
- The current agreement with the state educational agency (SEA) does not contain all required components for such agreements.

- ACCES fiscal policy FIS 08-01 covering the provision of transition-related consultation and technical assistance is beyond the scope of pertinent federal regulations because it provides for the provision of services to individuals, not only educational agencies and institutions.
- The use of VR program funds to support arrangements developed pursuant to FIS 08-01 was not authorized as the provision of transition-related consultation and technical assistance services; nor were such expenditures allowable and allocable to the VR program.
- The costs of disability program navigators and disability resource coordinators in the one-stop centers were not properly allocated to the VR program.
- ACCES does not engage in federally-required monitoring of grant-supported activities.

Development of the Technical Assistance Plan

RSA will collaborate closely with ACCES and the Northeast Region 2 TACE to develop a plan to address the technical assistance needs identified by ACCES in Appendix A of this report. RSA, ACCES and the Northeast Region 2 TACE will conduct a teleconference within 60 days following the publication of this report to discuss the details of the technical assistance needs, identify and assign specific responsibilities for implementing technical assistance and establish initial timeframes for the provision of the assistance. RSA, ACCES and the Northeast Region 2 TACE will participate in teleconferences at least semi-annually to gauge progress and revise the plan as necessary.

Review Team Participants

Members of the RSA review team included Terry Martin (Technical Assistance Unit); Jim Doyle and Tonya Stellar (VR Program Unit); Adrienne Grierson (Fiscal Unit); and Joe Pepin (Data Collection and Analysis Unit). Although not all team members participated in the on-site visit, each contributed to the gathering and analysis of information, and the development of this report.

Acknowledgement

RSA wishes to express appreciation to the representatives of ACCES for the cooperation and assistance extended throughout the monitoring process. RSA also appreciates the participation of the SRC, the Client Assistance Program and advocates, and other stakeholders in the monitoring process.

SECTION 2: PERFORMANCE ANALYSIS

This analysis is based on a review of the programmatic and fiscal data contained in Table 2.1 and 2.2 below and is intended to serve as a broad overview of the VR program administered by ACCES. It should not be construed as a definitive or exhaustive review of all available agency VR program data. As such, the analysis does not necessarily capture all possible programmatic or fiscal trends. In addition, the data in Table 2.1 measure performance based outcomes on individuals who exited the VR program during FY 2006 through FY 2010. Consequently, the table and accompanying analysis do not provide information derived from ACCES open service records including that related to current applicants, individuals who have been determined eligible and those who are receiving services. ACCES may wish to conduct its own analysis, incorporating internal open caseload data, to substantiate or confirm any trends identified in the analysis.

VR Program Analysis

Table 2.1
ACCES Program Performance Data for FY 2006 through FY 2010

All Individual Cases Closed	Number, Percent, or Average	2006	2007	2008	2009	2010	Change from 2006 to 2010	Agency Type 2010
TOTAL CASES CLOSED	Number	40,205	38,859	39,114	41,713	48,508	8,303	317,162
	Percent	100.00%	100.00%	100.00%	100.00%	100.00%	20.70%	100.00%
Exited as an applicant	Number	6,130	5,571	6,195	7,686	8,657	2,527	49,928
	Percent	15.20%	14.30%	15.80%	18.40%	17.80%	41.20%	15.70%
Exited during or after trial work experience/extended evaluation	Number	227	154	214	208	356	129	2,738
	Percent	0.60%	0.40%	0.50%	0.50%	0.70%	56.80%	0.90%
TOTAL NOT DETERMINED ELIGIBLE	Number	6,357	5,725	6,409	7,894	9,013	2,656	52,666
	Percent	15.80%	14.70%	16.40%	18.90%	18.60%	41.80%	16.60%
Exited without employment outcome after IPE, before services	Number	2	2	1	2	3	1	4,268
	Percent	0.00%	0.00%	0.00%	0.00%	0.00%	50.00%	1.30%
Exited from order of selection waiting list	Number	0	0	0	0	0	0	6,587
	Percent	0%	0%	0%	0%	0%	0%	2.10%

All Individual Cases Closed	Number, Percent, or Average	2006	2007	2008	2009	2010	Change from 2006 to 2010	Agency Type 2010
Exited without employment after eligibility, before IPE	Number	11,160	10,555	10,568	10,789	13,125	1,965	88,031
	Percent	27.80%	27.20%	27.00%	25.90%	27.10%	17.60%	27.80%
TOTAL EXITED AFTER ELIGIBILITY, BUT PRIOR TO RECEIVING SERVICES	Number	11,162	10,557	10,569	10,791	13,128	1,966	98,886
	Percent	27.80%	27.20%	27.00%	25.90%	27.10%	17.60%	31.20%
Exited with employment	Number	12,956	13,198	13,236	12,151	12,092	-864	87,039
	Percent	32.20%	34.00%	33.80%	29.10%	24.90%	-6.70%	27.40%
Exited without employment	Number	9,730	9,379	8,900	10,877	14,275	4,545	78,571
	Percent	24.20%	24.10%	22.80%	26.10%	29.40%	46.70%	24.80%
TOTAL RECEIVED SERVICES	Number	22,686	22,577	22,136	23,028	26,367	3,681	165,610
	Percent	56.40%	58.10%	56.60%	55.20%	54.40%	16.20%	52.20%
EMPLOYMENT RATE	Percent	57.11%	58.46%	59.79%	52.77%	45.86%	-19.70%	52.56%
Transition age youth	Number	13,935	13,869	14,760	17,515	21,336	7,401	107,377
	Percent	34.70%	35.70%	37.70%	42.00%	44.00%	53.10%	33.90%
Transition age youth employment Outcomes	Number	4,340	4,485	4,936	4,937	5,045	705	27,618
	Percent	33.50%	34.00%	37.30%	40.60%	41.70%	16.20%	31.70%
Competitive employment outcomes	Number	12,327	12,457	12,530	11,467	11,523	-804	85,263
	Percent	95.10%	94.40%	94.70%	94.40%	95.30%	-6.50%	98.00%
Supported employment outcomes	Number	3,048	3,087	2,955	2,659	2,434	-614	11,214
	Percent	23.50%	23.40%	22.30%	21.90%	20.10%	-20.10%	12.90%
Average hourly wage for competitive employment outcomes	Average	\$10.04	\$10.37	\$10.54	\$10.55	\$10.70	\$0.66	\$11.14
Average hours worked for competitive employment outcomes	Average	31.6	31.6	31.3	30.6	30.1	-1.5	30.9
Competitive employment outcomes at 35 or more hours per week	Number	6,878	6,858	6,818	5,756	5,432	-1,446	42,997
	Percent	53.10%	52.00%	51.50%	47.40%	44.90%	-21.00%	49.40%
Employment outcomes meeting SGA	Number	9,077	8,918	8,767	7,520	7,378	-1,699	56,039
	Percent	70.10%	67.60%	66.20%	61.90%	61.00%	-18.70%	64.40%
Employment outcomes with employer-provided medical insurance	Number	4,006	3,894	3,827	3,091	2,816	-1,190	19,288
	Percent	30.90%	29.50%	28.90%	25.40%	23.30%	-29.70%	22.20%

Positive Trends

From FY 2006 through FY 2010, the percentage of individuals who exited the VR program after the determination of eligibility, but prior to the delivery of services remained relatively constant, ranging from a low of 25.9 percent in FY 2008, to a high of 27.8 percent in FY 2006. This percentage was below that for all general agencies of 31.2 percent in FY 2010. The average hourly wages earned by individuals who achieved employment increased by \$.66, from \$10.04 in FY 2006, to \$10.70 in FY 2010.

From FY 2007 to FY 2010, ACCES increased the number and percentage of transition-age youth it served, from 13,869 individuals (35.7 percent) to 21,336 individuals (44 percent). This percentage was higher than the national average for all general agencies of 33.9 percent in FY 2010. In addition, the number and percentage of transition-age youths served who achieved employment compared to all individuals whose cases were closed increased from 4,340 individuals (33.5 percent) in FY 2006, to 5,045 individuals (41.7 percent) in FY 2010. This figure was slightly above the national average for all general agencies of 31.7 percent in FY 2010.

Trends Indicating Potential Risk to the Performance of the VR Program

From FY 2007 through FY 2010, the overall number and percentage of individuals who exited the VR program prior to eligibility determination (as an applicant, during or after trial work experiences or extended employment) increased, with the greatest increase from 6,409 individuals, or 16.4 percent, in FY 2008 to 9,013 individuals, or 18.6 percent, in FY 2010, compared to the national average of 16.6 percent for general agencies in that year. In addition, the total number of individuals who exited the VR service delivery system after eligibility was determined, but prior to service delivery, increased from 10,557 in FY 2007 to 13,128 in FY 2010.

The overall percentage of individuals who did not achieve successful employment increased from 22.8 percent in FY 2008, to 29.4 percent in FY 2010, compared to the national average of 24.8 percent for general agencies. During the same period, the percentage of individuals who achieved successful employment decreased from 33.8 percent in FY 2008 to 24.9 percent in FY 2010. Likewise, the employment rate declined from 59.79 percent in FY 2008, to 45.86 percent in FY 2010, which was below the national average of 52.56 percent for all general agencies in that year.

The total number of individuals who achieved competitive employment declined between FY 2008 and FY 2010, from 12,530 to 11,523, while the overall percentage of competitive employment outcomes increased from 94.7 percent to 95.3 percent during the same period. However, this percentage remained lower than that for all general agencies of 98 percent.

Similarly, the number and percentage of individuals who achieved supported employment decreased between FY 2007 and FY 2010, from 3,087 (23.4 percent) to 2,434 (20.1 percent),

which was greater than the national average of 12.9 percent of the outcomes achieved by individuals served by all general agencies who achieved supported employment during FY 2010.

From FY 2006 to FY 2010, the performance of ACCES on measures related to the quality of employment outcomes declined, including on those that assess the average hours worked per week by individuals who achieved competitive employment, competitive employment outcomes for persons who worked at least 35 hours per week, employment outcomes through which individuals earned substantial gainful activity, and employment outcomes achieved through which individuals received employer-provided medical insurance. During the same period, the average hourly wage for individuals who achieved competitive employment was below the national average of \$11.14 for all general agencies. Of the individuals who achieved competitive employment after receiving services during the same period, ACCES experienced a 29.7 percent decrease in the number of individuals who received employer-provided medical insurance, from 4,006 (30.9 percent) in FY 2006, to 2,816 (23.3 percent) in FY 2010. In addition, the average hours worked per week decreased during the period from 31.6 hours in FY 2006, to 30.1 hours in FY 2010. This figure was less than, but comparable to the national average of 30.9 hours for all general agencies. The percentage of individuals who achieved competitive employment and worked 35 or more hours per week and the percentage of individuals who achieved employment and met the threshold of substantial gainful activity also decreased from FY 2006 to FY 2010 and were lower than the national averages for all combined agencies.

Throughout the course of the review, RSA discussed both the agency's positive performance trends and those that posed potential risk to the VR program. ACCES indicated its intent to conduct further analyses to determine the factors contributing to its improved performance related to the number and percentage of youth served to the total population served, as well as the increase in the number and percentage of youth served who achieved employment. In addition, ACCES indicated its intent to conduct further analyses to determine the factors contributing to the increase in the number and percentage of individuals exiting from the various stages of the VR program prior to service provision and after receiving services, but without achieving employment. ACCES also intends to conduct such analyses with respect to the decline in the number of individuals achieving successful employment, the employment rate and quality indicators. Identifying independent variables that may have contributed to individuals dropping out at various points in the VR service delivery process may assist the agency to serve more individuals and improve its employment rate, as well as the quality of employment outcomes achieved.

ACCES attributed the decline in performance to several reasons, including its inability to access unemployment data to survey the work histories of individuals through the Social Security Administration or the Internal Revenue Service prior to closing cases as unsuccessful employment outcomes. ACCES communicated to RSA that it has revised its State Plan goals and priorities to emphasize the importance of quality employment opportunities for the customers it serves. With respect to the decline in the number of supported employment outcomes achieved by individuals served, ACCES is reviewing its supported employment policies and re-designing its contracts, to include the provision of supported employment training to ACCES staff and service providers.

Fiscal Analysis

Table 2.2

New York ACCES Fiscal Performance Data for Federal FY 2007 through Federal FY 2011

VR Fiscal Profile	Quarter	2007	2008	2009	2010	2011
Grant amount per MIS	4 th	122,752,578	123,775,314	131,640,440	152,323,333	144,715,873
	Latest/ Final*	122,752,578	123,775,314	131,640,440	152,323,333	
Total outlays	4 th	117,835,309	132,564,982	142,966,971	171,980,616	134,644,294
	Latest/ Final*	183,558,168	181,471,363	192,574,544	210,579,303	
Total unliquidated obligations	4 th	60,860,295	81,741,359	66,275,097	56,714,909	63,776,150
	Latest/ Final*	-	-	-	708,905	
Federal Share of Total Outlays	4 th	70,011,121	82,830,117	83,793,673	78,952,679	28,831,784
	Latest/ Final*	122,752,578	123,775,314	131,637,715	152,097,091	
Federal share of unliquidated obligations	4 th	20,911,511	24,952,494	16,268,501	25,703,469	32,488,676
	Latest/ Final*	-	-	-	226,242	
Total federal share	4 th	90,922,632	107,782,611	100,062,174	104,656,148	61,320,460
	Latest/ Final*	122,752,578	123,775,314	131,637,715	152,323,333	
Recipient funds	4 th	26,912,677	24,782,371	42,904,797	67,324,468	73,323,834
	Latest/ Final*	60,805,590	57,696,049	60,936,829	58,255,970	
Recipient share of unliquidated obligations	4 th	39,948,784	56,788,865	50,006,596	31,011,440	31,287,474
	Latest/ Final*	-	-	-	482,663	
Agency actual match (total recipient share)	4 th	66,861,461	81,571,236	92,911,393	67,324,468	73,323,834
	Latest/ Final*	60,805,590	57,696,049	60,936,829	58,255,970	
Agency required match	4 th	18,948,372	22,417,808	22,678,593	21,368,387	7,803,266
	Latest/ Final*	33,222,743	33,499,545	35,627,488	41,164,778	
Over/under match	4 th	-47,913,089	-59,153,428	-70,232,800	-45,956,081	-65,520,568
	Latest/ Final*	-27,582,847	-24,196,504	-25,309,341	-17,091,192	
MOE**	4 th					
	Latest/ Final*			60,936,829	58,255,970	
Unobligated funds qualifying for carryover	4 th	31,829,946	15,992,703	31,578,266	47,667,185	83,395,413
	Latest/ Final*	-	-	2,725	-	
Total program income realized	4 th	589,051	4,673,793	4,796,437	3,245,027	1,943,361

VR Fiscal Profile	Quarter	2007	2008	2009	2010	2011
	Latest/ Final*	589,052	4,673,793	4,796,438	3,245,027	
Total indirect costs	4th	1,463,777	11,837,352	12,829,078	13,377,064	15,755
	Latest/ Final*	10,890,149	11,712,943	13,884,971	171,118	

*Denotes Final or Latest SF-269 or SF-425 Submitted

** Based upon Final or Latest SF-269 or SF-425 Submitted

RSA reviewed fiscal performance data from federal FY 2007 through federal FY 2011. Based on the data in the table above, the agency matched its grant award through state appropriations in each fiscal year reviewed and was able to carryover unexpended federal funds in those years for an additional federal fiscal year. The agency's carryover decreased from federal FY 2007 to federal FY 2008, from \$32 million to \$16 million, representing a decrease from 26 percent to 13 percent of the federal award. The amount of carryover increased between federal FY 2009 and FY 2011, due primarily to the awarding of American Reinvestment and Recovery Act funds in federal FY 2009. The agency met its maintenance of effort requirements, both as an agency and on a state-wide basis. The US Department of Education is the cognizant agency and approved the indirect cost rate. Indirect costs for this agency are charged at a rate of 35 percent based on salaries only. Awards for FY 2010 and FY 2011 are still open; therefore, reported indirect costs remain low.

SECTION 3: EMERGING PRACTICES

While conducting the monitoring of the VR program, the review team collaborated with the ACCES, the SRC, the Northeast Region 2 TACE, and agency stakeholders to identify emerging practices in the following areas:

- strategic planning;
- program evaluation and quality assurance practices;
- human resource development;
- transition;
- the partnership between the VR agency and SRC;
- the improvement of employment outcomes, including supported employment and self-employment;
- VR agency organizational structure; and
- outreach to unserved and underserved individuals.

RSA considers emerging practices to be operational activities or initiatives that contribute to successful outcomes or enhance VR agency performance capabilities. Emerging practices are those that have been successfully implemented and demonstrate the potential for replication by other VR agencies. Typically, emerging practices have not been evaluated as rigorously as "promising," "effective," "evidence-based," or "best" practices, but still offer ideas that work in specific situations.

As a result of its monitoring activities, RSA identified the emerging practices below.

Improvement of Employment Outcomes, Including Supported Employment and Self-Employment

- **Supported Employment Information Directory:** The directory provides information on supported employment providers and is made available to VR counselors and consumers to assist in the selection of the most appropriate provider. The directory includes data on numbers of individuals served and employment outcome data such as hours, wages and benefits. This electronic reporting also enables VR counselors to obtain real time information from providers in the area of assessment and performance monitoring.
- **ACCES Workforce Development and Business Relations Team:** The team is aligned with the Council of State Administrators of Vocational Rehabilitation national employment team. ACCES promotes a single brand identity across the state, regional and local networks. ACCES current Workforce Development and Business Relations structure includes a statewide coordinator responsible for developing relationships with businesses that have a statewide presence; five regional coordinators responsible for developing relationships with regional companies based on labor market demand; and 15 local workforce development and business relations staff who work at the local level to develop local business relations, and work with the regional and statewide coordinator to implement statewide and regional activities. A complete description of the practices described above can be found on the [RSA website](#).

SECTION 4: RESULTS OF PRIOR MONITORING ACTIVITIES

During its review of the VR and SE programs in FY 2012, RSA assessed progress toward the achievement of goals through the implementation of strategies agreed to by ACCES resulting from the prior monitoring in FY 2007, and the resolution of findings from that review. The additional technical assistance requested by the agency to enable it to implement these prior strategies and to resolve any outstanding compliance findings is contained in Appendix A of this report titled “Agency Response.”

Recommendations

In response to RSA’s monitoring report dated November 16, 2007, ACCES agreed to implement the recommendations below. A summary of the agency’s progress toward implementation of each recommendation is included.

Goal 1: Beginning with FY 2008, ACCES will reduce the VR Program funds carried over by \$20 million annually, until the carryover balance is less than 20 percent of the federal funds made available to the state each FY.

Strategy 1: ACCES will closely monitor its plan for the reduction of carryover funds to meet the 20 percent threshold, with an interim goal of a \$20,000,000 reduction established for the end of FY 2008. In addition to the individual costs for each of the new programs listed above, ACCES will be spending additional funds to provide VR services for the expected increase in referrals to the agency.

Status: ACCES implemented fiscal controls and monitoring practices to reduce the carryover of VR program funds to less than 20 percent. In FY 2008, ACCES achieved a carryover of VR program funds of 12.92 percent, and 23.99 percent in FY 2009. The amount of carryover increased to 31.29 percent in FY 2010. The FY 2010 increase is attributed to the management of VR program funds and funding received under the American Recovery and Reinvestment Act of 2009.

Goal 2: For FY 2007, ACCES goal is to achieve a three percent increase in the number of individuals with employment outcomes from FY 2006 performance level.

Strategy 1: Exploring new potential referral sources, including underserved minorities; revitalizing communication with traditional referral sources; and developing marketing and outreach activities to individuals.

Strategy 2: Increasing the number of counselors and other staff; improving staff efficiency by streamlining and automating paperwork; providing staff with the training and support needed to process VR participants who speak little or no English; and mentoring new staff.

Status: ACCES developed a number of initiatives to increase employment outcomes including updating policy and training staff on on-the-job training; assessing emerging work markets and

labor market trends for employment growth and opportunities; developing a data tracking system for supported employment to ensure accountability for outcomes; promoting participation in post-secondary training and education; and developing statewide and regional business partnerships. The initiatives resulted in an increase in employment outcomes from 32.2 percent in FY 2006, to 34 percent in FY 2007. However, in FY 2010, the percentage of individuals who achieved employment outcomes was 24.9 percent. The agency attributed the decline to economic difficulties affecting the state of New York.

Goal 3: Improve the hourly earnings of ACCES consumers as described in ACCES s' Program Improvement Plan.

Strategy 1: ACCES college policy and procedures were revised April 2007 to promote greater participation in postsecondary education and training leading to higher wage employment.

ACCES is developing a more effective employer database to work systematically with employers who have a history of hiring ACCES consumers. Partnerships with school districts and postsecondary institutions should lead to higher wage employment. Several ACCES offices are collaborating with benefits counseling providers through the Social Security Administration Work Incentives Planning and Assistance projects or the independent living centers to provide benefits counseling early in the VR process. This should lead to generally higher wage outcomes for ACCES consumers.

Strategy 2: Continue to evaluate any additional factors that are affecting the hourly earnings of ACCES consumers served to enhance the range of strategies leading to higher-paying employment outcomes;

Strategy 3: Emphasize to ACCES district managers, supervisors, counselors and other staff the importance the agency places on providing services that lead to jobs and careers with high earnings, as described in the Performance Improvement Plan;

Strategy 4: Increase the number of consumers receiving postsecondary education services; and explore the reason for the NY City metropolitan area residents' low postsecondary education service rate, and improve the rate;

Strategy 5: Explore the reason for the NY City metropolitan area residents' low postsecondary education service rate, and improve the rate.

Status: ACCES instituted strategies to improve hourly earnings including promoting greater participation in post-secondary training and education; developing stronger local partnerships with school districts and post-secondary institutions; and collaborating with the SRC to identify and update priorities, goals and strategies to increase consumer wages. These initiatives resulted in an increase of \$.66 from the FY 2006 hourly earnings level of \$10.04.

Goal 4: Internal and external quality assurance systems will be on going, rigorous, and useful to both ACCES staff and its consumers.

Strategy 1: Fully staff ACCES quality assurance unit and develop a quality assurance program to review both VR and SE contractors on a regular schedule; incorporate a financial component

of monitoring contracts to include verification of the invoice amounts being charged as well as their development in proposals; and develop a case-review program that ensures policy and VR program compliance consistently throughout its offices.

Status: ACCES instituted a number of initiatives to enhance internal and external quality assurance systems including conducting satisfaction surveys of individuals whose cases are closed after receiving services without achieving an employment outcome; developing new SE contracts that include performance-based funding strategies, updated standards for SE services and protocols to evaluate the standards; and conducting regular reviews of both district office case files, provider records and specific internal reviews on a regular basis.

Compliance Findings and Corrective Actions

FY 2007 monitoring did not result in the identification of programmatic or fiscal findings. Therefore, no corrective action plan was developed as a result of FY 2007 monitoring. However, RSA monitoring conducted in FY 2004, did identify five findings that necessitated the development and implementation of a corrective action plan, which described the steps ACCES would take to resolve the compliance findings, timelines for the implementation of the steps, and the methods by which the agency and RSA would evaluate the agency's progress toward the resolution of the findings. The corrective action plan was implemented March 2, 2006, and completed on October 5, 2011. A summary of ACCES progress toward the resolution of each finding appears below.

Through the implementation of the corrective action plan, ACCES successfully resolved compliance findings in the following programmatic and fiscal areas:

- agreements between VR Agencies and institutions of higher education;
- the presumption of eligibility of individuals on Social Security Disability Insurance and/or Supplemental Security Income;
- definition of "significant disability;"
- limitations on the provision of VR services; and
- establishment of timelines for the development of the IPE.

Program Improvement Plans for Standards and Indicators

In FY 2009, ACCES did not meet the performance levels for indicators 1.1, 1.2, and 1.5. In FY 2010, ACCES and RSA implemented a new program improvement plan. ACCES identified causes, activities and expected achievement dates. ACCESS did not meet the performance levels for the same three indicators in FY 2010.

SECTION 5: FOCUS AREAS

A. Organizational Structure Requirements of the Designated State Agency (DSA) and Designated State Unit (DSU)

The purpose of this focus area was to assess the compliance of ACCES with the federal requirements related to its organization within the New York State Education Department (SED) and the ability of ACCES to perform its non-delegable functions, including the determination of eligibility, the provision of VR services, the development of VR service policies, and the expenditure of funds. Specifically, RSA engaged in a review of:

- compliance with statutory and regulatory provisions governing the organization of SED and ACCES under 34 CFR 361.13(b);
- processes and practices related to the promulgation of VR program policies and procedures;
- the manner in which ACCES exercises responsibility over the expenditure and allocation of VR program funds, including procurement processes related to the development of contracts and agreements;
- procedures and practices related to the management of personnel, including the hiring, supervision and evaluation of staff; and
- the manner in which ACCES participates in the state's workforce investment system.

In the course of implementing this focus area, RSA consulted with the following agency staff and stakeholders:

- SED and ACCES directors and senior managers;
- SED and ACCES staff members responsible for the fiscal management of the VR program;
- SRC chairpersons and members;
- Client Assistance Program staff members; and
- Northeast Region 2 TACE center representatives.

In support of this focus area, RSA reviewed the following documents:

- diagrams illustrating the DSU's position in relation to the DSA, its relationship and position to other agencies that fall under the DSA, and the direction of supervisory reporting between agencies;
- diagrams identifying all programs from all funding sources that fall under the administrative purview of the DSU, illustrating the number of full-time equivalent (FTE) staff working on each program;
- the number of full-time employees (FTEs) in each program, identifying the specific programs on which they work and the individuals to whom they report, specifically including:

- individuals who spend 100 percent of their time working on the rehabilitation work of ACCES;
 - individuals who work on rehabilitation work of ACCES and one or more additional programs/cost objectives (e.g., one-stop career centers); and
 - individuals under ACCES that do not work on rehabilitation projects of the DSU.
- sample memoranda of understanding (MOUs) and/or cost allocation plans with one-stop career centers; and
 - documents describing New York procurement requirements and processes.

Overview

ACCES, the DSU for the administration of the VR and SE programs, is located within the New York SED, as the DSA. The DSA is under the direction of the commissioner who reports to the New York State Board of Regents. The Regents are responsible for the general supervision of all educational activities within New York, presiding over the University of New York and the New York State Education Department (SED). The Regents are organized into standing committees, subcommittees and work groups whose members and chairs are appointed by the Chancellor. The Board is comprised of 17 members elected by the state legislature for five-year terms. The DSA includes eight program offices including ACCES, all of which report directly to the commissioner of SED.

In December 2010, the SED completed a reorganization of its principal offices including the former DSU, the Office of Vocational and Educational Services for Individuals with Disabilities. The resulting structure put in place ACCES and its present deputy commissioner.

ACCES consists of four units including the VR program; Fiscal and Administrative Services; Adult Education Programs and Policy; and the Bureau of Proprietary School Supervision. At the time of the review, ACCES reported a total of 749 staff, of which five were in the Office of Deputy Commissioner; 666 in the VR program; 24 in Fiscal and Administrative Services; 34 in Adult Education Programs and Policy; and 20 in the Bureau of Proprietary School Supervision.

RSA's review of the organizational structure of the ACCES did not result in the identification of observations and recommendations. In addition, the implementation of this focus area did not result in the identification of compliance findings.

Technical Assistance

During the course of monitoring activities, RSA provided technical assistance to ACCES regarding organizational requirements of the DSA and DSU. Specifically, RSA provided clarification on the organizational position of the assistant commissioner of the VR program, a unit within the DSU, and the assistant commissioner's relationship to the DSU full-time director, the deputy commissioner. In addition, RSA provided explanations regarding the significance of the position of the DSU within the DSA as provided at 34 CFR 361.13(b)(2), and the organizational situation of ACCES, as the DSU for VR, which is positioned at an organizational level and has an organizational status within the DSU comparable to other major organizational units within the agency.

B. Transition Services and Employment Outcomes for Youth with Disabilities

The purpose of this focus area was to assess ACCES's performance related to the provision of transition services to, and the employment outcomes achieved by, youth with disabilities and to determine compliance with pertinent federal statutory and regulatory requirements.

Section 7(37) of the Rehabilitation Act defines "transition services" as a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation.

In the course of implementing this focus area, RSA identified and assessed the variety of transition services provided in the state, including community-based work experiences and other in-school activities, and post-secondary education and training, as well as the strategies used to provide these services. RSA utilized five-year trend data to assess the degree to which youth with disabilities achieved quality employment with competitive wages. In addition, RSA gathered information related to the coordination of state and local resources through required agreements developed pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and the Rehabilitation Act, and communities of practice. RSA also gathered information regarding emerging practices initiated by the VR agency in the area of services to youth with disabilities, as well as technical assistance and continuing education needs of VR agency staff.

To implement this focus area, RSA reviewed:

- formal interagency agreements between the VR agency and the State educational agency (SEA);
- transition service policies and procedures; and
- VR agency resources and collaborative efforts with other federal, state and local entities.

In support of its monitoring activities, RSA reviewed the following documents:

- the agreement between the VR agency and the SEA;
- samples of other transition contracts and memoranda of understanding, cooperative agreements, if applicable; and
- VR policies and procedures for the provision of transition services.

To assess the performance related to the provision of transition services and the outcomes achieved by youth with disabilities, RSA reviewed ACCES relevant data from FY 2006 through FY 2010, describing:

- the number and percentage of transition-age youth who exited the VR program at various stages of the process;
- the amount of time these individuals were engaged in the various stages of the VR process, including eligibility determination, development of the IPE and the provision of services;
- the number and percentage of transition-age youth receiving services, including assessment, university and vocational training, rehabilitation technology and job placement; and
- the quantity, quality and types of employment outcomes achieved by transition-age youth.

RSA also compared the performance of ACCES with peer agencies during the same period, as well as with national averages for other general VR agencies.

As part of its review activities, RSA met with the following DSA and DSU staff and stakeholders to discuss the provision of services to youth with disabilities:

- ACCES administrator;
- ACCESS regional coordinators and district office managers;
- ACCES VR counselors and transition staff;
- ACCES transition coordinators serving as liaisons with the SEA and other agencies; and
- state and local school personnel, including personnel from the SED Office of P-12 and Office of Special Education.

RSA's review of transition services and employment outcomes achieved by youth with disabilities resulted in the identification of the following observation and recommendations. The technical assistance requested by ACCES to enable it to carry out these recommendations is contained in Appendix A of this report titled "Agency Response." In addition, the compliance findings identified by RSA through the implementation of this focus area are contained in Section 6 of this report.

Observations and Recommendations

5.B.1 Employment Outcomes for Transition-Age Youth and the Provision of Services

Observation: Although the number of youth with disabilities who achieved employment increased from FY 2006 to FY 2010, ACCES experienced a decline in the percentage of youth who achieved an employment outcome when compared to all youth who requested services and exited the VR program from FY 2008 to FY 2010. During the same period, the employment rate and the quality of employment outcomes also declined. However, the quality of employment achieved for youth served by ACCES was greater than or comparable to the national average for other general agencies. This performance may have resulted, in part, from the provision of relatively fewer services to transition age youth when compared to those provided by all other general agencies, as well as the failure to appropriately code services funded or provided by ACCES.

- The total number of youth with disabilities served by ACCES increased 52 percent during the past five years, from 7,635 individuals in FY 2006 to 11,632 individuals in FY 2010. During this same period, the total number of youth with disabilities who achieved employment increased 16 percent, from 4,340 to 5,045.
- The total number of youth with disabilities who exited the VR program without employment after receiving services increased from 3,222 in FY 2008, to 6,587 in FY 2010. As a result, the employment rate declined significantly, from 60.51 percent in FY 2008 to 43.37 percent in FY 2010, which is below the national average for all general agencies at 48.95 percent.
- The number and percentage of youth with disabilities who exited the VR program increased by 53.11 percent during the period covered by the review, from 13,935 in FY 2006, to 21,336 in FY 2010. As illustrated in Table 5.B.1. a, ACCES has closed a higher percentage of cases for youth with disabilities at application, trial work and without employment after receiving services, when compared to the national average of other general agencies. During this same time, the overall percentage of youth with disabilities whose cases were closed after achieving an employment outcome declined from 31.14 percent in FY 2006, to 23.65 percent in FY 2010, which was below the national average for general agencies at 25.72 percent.

Table 5.B.1.a
Types of Closures for Transition Youth from FY 2006 through FY 2010

All Individual Cases Closed	Number or Percent	2006	2007	2008	2009	2010	Agency Type 2010
TOTAL CASES CLOSED	Number	13,935	13,869	14,760	17,515	21,336	4,474
Exited as an applicant	Number	2,180	2,025	2,373	3,135	3,777	646
	Percent	15.64%	14.60%	16.08%	17.90%	17.70%	14.45%
Exited during or after trial work experience/extended evaluation	Number	52	31	50	76	136	37
	Percent	2.39%	1.53%	2.11%	2.42%	3.60%	0.82%
Total exited after eligibility, but prior to receiving services	Number	4,068	4,051	4,179	4,754	5,791	1,440
	Percent	29.19%	29.21%	28.31%	27.14%	27.14%	32.19%
Exited with employment	Number	4,340	4,485	4,936	4,937	5,045	1,151
	Percent	31.14%	32.34%	33.44%	28.19%	23.65%	25.72%
Exited without employment	Number	3,295	3,277	3,222	4,613	6,587	1,151
	Percent	23.65%	23.63%	21.83%	26.34%	30.87%	26.83%
Employment Rate		56.84%	57.78%	60.51%	51.70%	43.37%	48.95%

- During the review period, the quality of employment outcomes for youth with disabilities steadily decreased. However, the quality of employment outcomes for youth served by

ACCES was greater than or comparable to the national average of other general agencies in FY 2010. As indicated in Table 5.B.1.b below, quality of employment indicators such as average hours worked per week, percent who work 35 or more hours per week, percent employed at substantial gainful activity, and percent of individuals with employer-provided medical insurance declined. The average wage for youth with disabilities increased by \$0.61 during the past five years, from \$9.01 in FY 2006 to \$9.62 in FY 2010.

Table 5.B.1.b
Quality of Employment Indicators for Transition Youth from Federal FY 2006 through Federal FY 2010

Program Performance	2006	2007	2008	2009	2010	Agency Type 2010
Average hourly wage	\$9.01	\$9.34	\$9.48	\$9.54	\$9.62	\$9.57
Average hours worked	31.6	31.59	31.44	30.58	29.89	29.88
Employment outcomes at 35 or more hours per week	52.37%	51.08%	50.85%	46.79%	42.42%	13.99%
Employment outcomes meeting SGA	70.67%	68.76%	66.55%	61.25%	58.45%	57.90%
Employment outcomes with employer-provided medical insurance	26.52%	26.98%	27.05%	23.70%	20.75%	19.10%

- As demonstrated in Table 5.B.1.c, ACCES provided a smaller percentage of individuals with assessment services; college or university training; diagnosis and treatment of impairments; job placement assistance; job readiness training; job search assistance; on-the-job training; rehabilitation technology; and VR counseling and guidance, when compared to the averages of all general agencies.

Table 5.B.1.c
VR services for Transition Youth Compared to National Average for General Agencies in FY 2010

Services Provided	2010	Agency Type 2010
Assessment services	48.29%	56.15%
College or university training	19.45%	20.97%
Diagnosis and treatment of impairments	.62%	24.40%
Job placement assistance	15.35%	36.15%
Job readiness training	3.43%	13.21%
Job search assistance	.24%	21.20%
On-the-job training	.21%	3.61%

Services Provided	2010	Agency Type 2010
Rehabilitation technology	1.43%	3.61%
VR counseling and guidance	4.54%	54.55%

- ACCES reported the low percentage of service provision may be due to coding errors. Specifically, a number of ACCES staff reported that services not purchased by the agency do not get coded into the case management system, such as vocational guidance and counseling. When discussing the procedure for coding services into the case management system, staff expressed a wide range of responses.

Recommendation 5.B.1: RSA recommends that ACCES:

- 5.B.1.1 evaluate service delivery and employment outcome trends, to include the quality of employment outcomes of transition-age youth to determine the factors contributing to performance;
- 5.B.1.2 develop and implement a strategy or strategies to improve service delivery, employment outcomes and the employment rate for transition-age youth to improve service delivery;
- 5.B.1.3 analyze the differences regarding service provision identified in this observation to properly evaluate the reasons for the discrepancies between ACCES's RSA-911 figures and services provided;
- 5.B.1.4 provide ACCES staff with necessary training related to case management system edits and procedures to code, record and report accurate information; and
- 5.B.1.5 evaluate the review process and case management reports used by supervisors to ensure compliance with appropriate coding.

Technical Assistance

The RSA review team provided technical assistance to ACCES in the area of transition services and employment outcomes for youth with disabilities while on-site in New York. Specifically, RSA provided guidance on the timely development of IPEs within the state established standard of 90 days after the determination of eligibility, as well as the inclusion and reflection of services provided by ACCES or funded through comparable benefits on the IPE and reports of services provided to RSA through the RSA-911. RSA also provided to ACCES an analysis of services provided, highlighting the smaller percentages of youth served by ACCES, whose cases were closed in FY 2010 and who received assessment services, job search services, job placement assistance, vocational guidance and counseling services when compared to the national average of general agencies. RSA and ACCES discussed the reporting of services provided to youth with disabilities through the RSA-911 and guidance was provided related to coding and reporting all services whether purchased or provided by ACCES, to include those services funded or provided by comparable benefits. RSA also provided an analysis of and guidance related to the quantity and quality of employment outcomes for transition-age youth served by ACCES, including the declining employment rate.

In addition, RSA provided technical assistance and guidance related to revisions to the formal interagency agreement between ACCES and the SEA covering coordination of transition planning including the facilitation of the IEP and development of the IPE; roles and responsibilities of the school system and VR, to include fiscal responsibilities; outreach policies

and procedures including a description of the purpose of the VR program, eligibility requirements, application procedures and scope of services available to students determined eligible for services; and the integration of the FY 2008 ACCES policy revisions jointly developed by ACCES and the New York SED Office of P-12. Furthermore, RSA provided ACCES with samples of SEA agreements implemented by other VR and educational agencies.

ACCES discussed with RSA its intent to review and possibly revise its policies related to work study opportunities that were last revised in 1997. RSA provided guidance related to the provision of on-the-job trainings; employer paid wages for hours worked at the prevailing wage rate and at least minimum wage, as well as the provision of maintenance and transportation as defined in the regulations at 34 CFR 361.5(b)(35) for costs or expenses incurred. RSA also clarified for ACCES that VR agencies are not permitted to pay an individual a flat fee per hour simply for participating in a VR training program. RSA communicated that this practice is neither necessary, nor reasonable and, therefore, is not allowable under the VR program (34 CFR 361.3, 34 CFR 80.22, and 2 CFR part 225, Appendix A, paragraph C).

Finally, during the course of the review, RSA also provided guidance related to the provision of consultative and technical assistance services through services to groups.

C. Fiscal Integrity of the Vocational Rehabilitation Program

The purpose of this focus area was to assess fiscal performance related to the VR program and to determine compliance with pertinent federal statutory and regulatory requirements, including OMB circulars. For purposes of the VR program, fiscal integrity is broadly defined as the proper and effective management of VR program funds to ensure that they are spent solely on allowable expenditures and activities. Through the implementation of this focus area, RSA reviewed: VR agency resource management; the management of match and maintenance of effort (MOE); internal and external monitoring and oversight; and allowable and allocable costs.

RSA used a variety of resources and documents in the course of this monitoring, including data maintained on RSA's MIS generated from reports submitted by the VR agency, e.g., Financial Status Report (SF-269/SF-425) and the Annual VR Program/Cost Report (RSA-2). The review covered fiscal data from FY 2006 thru FY 2010, along with other fiscal reports as necessary, to identify areas for improvement and potential areas of noncompliance.

Specifically, RSA engaged in the review of the following to ensure compliance with federal requirements:

- FY 2007 monitoring report issued pursuant to Section 107 of the Rehabilitation Act (see Section 4 above for a report of the agency's progress toward implementation of recommendations and resolution of findings);
- A-133 audit findings and corrective actions;
- state/agency allotment/budget documents and annual fiscal reports; and
- grant award, match, MOE, and program income documentation.

In addition RSA reviewed the following as part of the monitoring process to ensure compliance:

- service provider contracts;
- VR agency policies, procedures, and forms (e.g., monitoring, personnel certifications and personnel activity reports), as needed;
- internal agency fiscal reports and other fiscal supporting documentation, as needed; and
- VR agency cost benefit analysis reports.

RSA's review of the fiscal integrity of the VR Program administered by ACCES did not result in the identification of observations and recommendations. In addition, the compliance findings identified by RSA through the implementation of this focus area are contained in Section 6 of this report.

Technical Assistance

While onsite, RSA provided technical assistance to ACCES fiscal staff related to the late liquidation process. Specifically, RSA staff advised ACCES about the language and information to include in a request for liquidating an award late. Subsequent to the onsite review, ACCES submitted two requests for late liquidation.

SECTION 6: COMPLIANCE FINDINGS AND CORRECTIVE ACTIONS

RSA identified the following compliance findings and corrective actions that ACCES is required to undertake. The technical assistance requested by the agency to enable it to carry out the corrective actions is contained in Appendix A to this report titled “Agency Response.” The full text of the legal requirements pertaining to each finding is contained in Appendix B.

ACCES must develop a corrective action plan for RSA’s review and approval that includes specific steps the agency will take to complete the corrective action, the timetable for completing those steps, and the methods the agency will use to evaluate whether the compliance finding has been resolved. RSA anticipates that the corrective action plan can be developed within 45 days from the issuance of this report and RSA is available to provide technical assistance to assist ACCES to develop the plan and undertake the corrective actions.

RSA reserves the right to pursue enforcement action related to these findings as it deems appropriate, including the recovery of funds, pursuant to 34 CFR 80.43 and 34 CFR part 81 of the Education Department General Administrative Regulations (EDGAR).

1. Individualized Plan for Employment (IPE)

Legal Requirements:

- Rehabilitation Act—Section 101(a)(9)
- VR Program Regulations—34 CFR 361.45 (a)(1) and (e)

Finding:

ACCES did not develop IPEs for transition-age youth within the timeline specified in its written policies at Section 421.00 Youth in School-Transition Planning and Services. Pursuant to Section 101(a)(9) of the Rehabilitation Act and in accordance with the implementing regulations at 34 CFR 361.45(a)(1) and (e), ACCES has established a timeline of 90 days from the date on which eligibility is determined for the development of the IPE for each student served. As part of its monitoring process, RSA reviewed the data provided by ACCES in the RSA-911 Report regarding the length of time taken for IPE development. In particular, ACCES’s data showed:

- Of the 11,632 transition-age youth served by ACCES in FY 2010, 7,630 transition-age youth or 65.59 percent had an IPE developed within ACCES’s established standard of 90 days from the date of eligibility determination. However, 4,002 or 34.41 percent of the youth served did not have their IPE developed within the state established standard of 90 days from the date of eligibility determination.
- The overall percentage of youth served who had an IPE developed within the state established standard of 90 days from the date of eligibility determination increased from 62.24 percent in FY 2006 to 65.59 percent in FY 2010, as did the percent of transition population served to total population served from 34.7 percent to 44 percent during the

same time period. However, during the period of review, the percentage of transition-age youth served who did not have an IPE developed within 90 days remained consistent, ranging from 38.28 percent to 33.56 percent.

- In FY 2010, the percent of transition-age youth who had an IPE developed beyond 90 days but less than six months was 16.64 percent, which was similar to FY 2006, when 16.59 percent of youth served had an IPE developed within this same period of time. The remaining number of transition-age youth served in FY 2010 who had an IPE developed at seven months or longer was 2,066 individuals, or 17.77 percent, which is a slight decrease from FY 2006, when 1,616 individuals or 21.17 percent of all youth served had an IPE developed during this same period of time.

As the FY 2010 data demonstrated, ACCES failed to comply with Section 101(a)(9) of the Rehabilitation Act and the requirements of 34 CFR 361.45(a)(1) and (e) by not developing IPEs for transition-age youths in a timely manner and within the 90-day timeline that ACCES established as its standard pursuant to these federal requirements.

Corrective Action 1: ACCES must:

- 1.1 cease the untimely development of IPEs;
- 1.2 provide written assurance within 10 days of receipt of the final monitoring report that the agency will ensure that all IPEs are developed within the time period that ACCES has established as its state standard pursuant to 34 CFR 361.45(e); and
- 1.3 submit the actions that ACCES will take, including timelines, to ensure that IPEs are developed in a timely manner and within 90 days of eligibility determination (e.g., in accordance with the agency's established timeline developed pursuant to Section 101(a)(9) of the Rehabilitation Act and its implementing regulations at 34 CFR 361.45(e)).

2. Agreement between the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) and the Office of Elementary, Middle and Secondary Education (EMSE)

Legal Requirements:

- Rehabilitation Act—Section 101(a)(11)(D)(i)–(iv)
- VR Program Regulations—34 CFR 361.22(b)(1)–(4)

Finding:

The Adult, Career and Continuing Education Services (ACCES) entered into an agreement with the Office of P-12 Education in FY 1993 that is not in compliance with the minimum requirements of a formal interagency agreement with the State educational agency (SEA) pursuant to Section 101(a)(11)(D) of the Rehabilitation Act and 34 CFR 361.22(b). ACCES entered into a formal interagency agreement with the Office of P-12 Education on October 30, 1992, when it was organized as the Office of Vocational and Educational Services for Individuals with Disabilities (VESID), prior to its reorganization of vocational rehabilitation as a division within ACCES in FY 2010 and prior to the establishment of the Office of P-12 Education, formerly the Office of Elementary, Middle and Secondary Education (EMSE). For

the purpose of this finding and analysis of the formal interagency agreement, RSA will reference ACCES and the Office of P-12 Education as the entities named in the SEA agreement.

The current agreement does not delineate the responsibilities of ACCES to provide consultation and technical assistance to assist educational agencies in planning for the transition of youth from school to post-school activities, including VR as required by Section 101(a)(11)(D)(i) and its implementing regulation at 34 CFR 361.22(b)(1). The agreement does highlight the commitment of the Office of P-12 Education and ACCES to develop a consultative role for vocational rehabilitation and discusses legislative proposals for VR to enter into agreements with local educational agencies; however, legislation was never passed. The SEA agreement should be revised to include the responsibilities of vocational rehabilitation and special education regarding the provision of technical assistance and consultation related to transition planning and programming in accordance with Section 101(a)(11)(D) and 34 CFR 361.22(b)(1).

In addition, the SEA agreement between ACCES and the Office of P-12 Education does not provide for the responsibilities of each party or entity with respect to the provision of transition planning in order to facilitate the development of the Individualized Education Program (IEP) in accordance with Section 101(a)(11)(D)(ii) and 34 CFR 361.22(b)(2). The agreement does reference that rehabilitation counseling was added to the statute of IDEA as a related service; a consulting role for rehabilitation and independent living personnel will be developed; independent living personnel and rehabilitation professionals may be consulted for vocational evaluation interpretation, job placement analysis and decisions made in conjunction with the Committees on Special Education (CSE); and that a designee will be established by the school to work with ACCES. In addition, the SEA agreement does include the coordination of information required for the development of an IEP and coordination of the Individualized Written Rehabilitation Program (IWRP). However, the SEA agreement should delineate the responsibilities of each agency to facilitate the completion of the IEP and coordination of the IPE to include VR as an active participant in the transition planning process that provides technical assistance and consultation as required by Section 101(a)(11)(D)(i) and (ii) and 34 CFR 361.22(b)(2).

Furthermore, the SEA agreement does not include the financial responsibilities of each agency related to the provision of services, including provisions for determining State lead agencies and qualified personnel responsible for transition services, as required by Section 101(a)(11)(D)(iii) and 34 CFR 361.22(b)(3). Currently, a summary of responsibilities, to include fiscal, is included in the cover to the SEA agreement related to the provision of transition services and state that each entity is financially responsible for the services each is mandated to provide. The SEA agreement should be revised to define roles and responsibilities, including fiscal, of both ACCES and the Office of P-12 Education in accordance with Section 101(a)(11)(D)(iii) and 34 CFR 361.22(b)(3).

Finally, the SEA agreement does not include procedures for outreach to and identification of students with disabilities in need of transition services pursuant to Section 101(a)(11)(D)(iv) and 34 CFR 361.22(b)(4). It also does not include a description of the purpose of the VR program, eligibility requirements, application procedures or the scope of services that can be provided to eligible individuals. The agreement does reference that referrals will be submitted as a result of decisions made by the CSEs, students and families. The SEA agreement should be revised to

include outreach procedures in accordance with the requirements at Section 101(a)(11)(D)(iv) and its implementing regulations at 34 CFR 361.22)(B)(4).

The current ACCES and Office of P-12 Education SEA agreement focuses efforts around the development of vocational evaluation standards, provision of vocational evaluations, development of roles for VR and independent living staff, as well as the roles and responsibilities of the CSEs. During the on-site portion of the monitoring review, ACCES and the Office of P-12 Education communicated that both entities are engaged in dialogue regarding the current SEA agreement and a revised draft is under development which includes the jointly developed and implemented ACCES policy 421.00 Youth in School: Transition Planning and Services Policy (August 2008). Both ACCES and the Office of P-12 Education are committed to strengthening and ensuring the coordinated facilitation and transition of students with disabilities from the receipt of educational services in schools to the receipt of vocational rehabilitation and adult services in the community.

Corrective Action 2: ACCES must:

- 2.1 submit a written assurance to RSA within ten days of the issuance of the final monitoring report that ACCES will ensure that the SEA agreement with the Office of P-12 Education will be updated and revised to reflect the appropriate entities involved in the formal interagency agreement and to comply with the requirements at Section 101(a)(11)(D) of the Rehabilitation Act and 34 CFR 361.22 (b); and
- 2.2 submit the revised SEA formal interagency agreement between ACCES and the Office of P-12 Education for RSA's review as part of ACCES' corrective actions associated with the FY 2012 Section 107 Monitoring Review.

3. Consultation and Technical Assistance related to Transition

Legal Requirements:

- Rehabilitation Act—Section 103(b)(6)
- VR Program Regulations—34 CFR 361.49(a)(7)

Finding:

ACCES Fiscal Policy FIS 08-01 describing the manner in which the agency provides consultation and technical assistance related to transition services is not in compliance with Section 103(b)(6) of the Rehabilitation Act and its implementing regulations at 34 CFR 361.49(a)(7) because it authorizes the provision of services to individuals with disabilities rather than the provision of consultation and technical assistance to educational agencies.

As stated in FIS 08-01 and verbally confirmed by ACCES staff during the course of the review, the agency adopted the policy pursuant to Section 103(b)(6) of the Rehabilitation Act and regulations at 34 CFR 361.49(a)(7). According to these statutory and regulatory provisions, VR services provided for the benefit of groups of individuals with disabilities may include: "Consultative and technical assistance services to assist educational agencies in planning the transition of students with disabilities from school to post-school activities, including

employment” (emphasis added). Under this authority, VR agencies are permitted to provide consultative and technical assistance services to an educational agency or institution that will assist the agency or institution to plan for the provision of transition services to students with disabilities; it does not allow for the provision of consultative and technical assistance services to other entities, such as CRPs and employers, or the provision of direct services to individuals.

In reviewing the policy, RSA found at least one area in which the policy, on its face, is not in compliance with Section 103(b)(6) of the Rehabilitation Act and 34 CFR 361.49(a)(7). In particular, FIS-08-01 asserts that ACCES (formerly known as VESID) intends to use the services to groups authority of section 103(b)(6) of the Rehabilitation Act and 34 CFR 361.49(a)(7) to provide a variety of VR services to students with disabilities, including vocational guidance, career exploration, vocational assessment, job search skills, and work experiences (FIS-08-01, page 2). As stated above, these specific statutory and regulatory provisions authorize the VR agency to provide only consultation and technical assistance services to assist educational agencies in planning for the transition of students with disabilities. These provisions do not authorize the provision of transition services directly to students with disabilities. Therefore, the portion of FIS-08-01 that allows for the provision of direct services to individuals pursuant to section 103(b)(6) of the Rehabilitation Act and 34 CFR 361.49(a)(7) is beyond the scope of this particular services to groups authority and, therefore, is not in compliance with Federal requirements.

In addition to the specific area of non-compliance just described, the policy also appears to allow for the development of contracts and Memoranda of Understanding for the provision of consultation and technical assistance services to CRPs, consumer organizations, and other entities. According to the first paragraph of FIS 08-01:

VESID will provide vocational rehabilitation services to groups, in accordance with 34 CFR 361.49, for consultative and technical assistance services related to the planning of transition for students with disabilities to postsecondary education and employment activities. When providing these transition services, VESID will establish contracts and/or Memorandums of Understanding with public or private, not-profit organizations, including community rehabilitation programs, consumer organizations, local education agencies, public institutions or higher education and related consortiums.

Although this paragraph references the provision of consultation and technical assistance in the first sentence of the paragraph, it does not indicate that such services would be provided solely to educational institutions as required by Section 103(b)(6) and 34 CFR 361.49(a)(7). As stated above, these provisions permit ACCES to provide consultation and technical assistance services to assist educational agencies -- not CRPs and other entities. To the extent that ACCES would rely on these authorities to implement this policy in such a way that ACCES would provide consultation and technical assistance services to CRPs and other entities, the policy would fail to comply with federal requirements. ACCES could, however, contract with CRPs to provide the consultation and technical assistance services authorized under section 103(b)(6) of the Rehabilitation Act and 34 CFR 361.49(a)(7) to educational agencies on ACCES’s behalf.

In summary, given that FIS 08-01 and its guidelines are not limited to the provision of consultation and technical assistance to educational institutions and clearly authorize the

provision of transition services to individual students with disabilities, it is beyond the scope of Section 103(b)(6) of the Rehabilitation Act and 34 CFR 361.49(a)(7) and, therefore, is not in compliance with federal requirements.

Corrective Action 3: ACCES must:

3.1 revise its Fiscal Policy FIS- 08-01 to be in compliance with the scope of Section 103(b)(6) of the Rehabilitation Act and 34 CFR 361.49(a)(7), stating that consultative and technical assistive services to educational agencies and institutions does not include the provision of VR services to other entities or individuals.

4. Arrangements Developed Pursuant to FIS 08-01

Legal Requirements:

- Rehabilitation Act—Sections 7(38), 103(a) and (b)(6), and 111(a)(1)
- VR Program Regulations—34 CFR 361.3, 34 CFR 361.5(b)(58), 34 CFR 361.12, 34 CFR 361.48, 34 CFR 361.49(a)(7)
- EDGAR—34 CFR 80.20(a)
- OMB Circulars—2 CFR 225, Appendix A, C.1.a, 2 CFR 225, Appendix A, C.2, and 2 CFR 225, Appendix A, C.3.a

Background:

In FY 2007, ACCES, then VESID, developed two separate “services to groups” programs pursuant to Section 103(b)(6) of the Rehabilitation Act, 34 CFR 361.49(a)(7) and its policy FIS 08-01 (see Finding 3 above) for the provision of services to students with disabilities. These programs are briefly described below.

Linking Employment, Academics and Employment Services Program

On August 22, 2007, ACCES entered into a MOU with the City University of New York (CUNY) to provide employment services to groups of college students with disabilities who were registered in degree/non degree programs, Adult and Continuing Education or Allied Programs. The Linking Employment, Academics and Employment Services (LEADS) program (initially known as the Employment Services for College Students Program) was designed to assist students with disabilities to navigate through the post-secondary education system, while providing necessary disability-related supports. Through the program, ACCES and CUNY intended to increase referrals of students to the VR program and the number of youth with disabilities sponsored by ACCES who were engaged in college or university training.

Under the MOU, ACCES allocated federal VR program funds, totaling approximately \$6.2 million from FYs 2007 through 2010. The majority of this funding was used to cover the salaries and other costs of CUNY personnel employed in the program and providing services under the MOU and other indirect costs.

Model Transition Program

During the contract years June 1, 2007 to November 30, 2009, ACCES entered into sixty (60) contracts with local educational agencies across the State of New York to provide transition services to students with disabilities during their last two years of high school, prior to exiting the school system. The impetus for programming was to increase referrals from the school system to ACCES and to strengthen coordination and referral documentation. Specifically, the purpose of the program was to “provide school districts opportunities to develop activities and programs for students to gain skills that better prepare them for post high school ACCES services and future employment” (per the MTP contract template) through evidence-based transition services provided by LEAs in conjunction with community providers of adult services and community partners (per the first paragraph of the RFP).

Although the RFP stated that the total MTP funding was to be \$42 million (\$12 million annually) of federal 110 funds, ACCES reported that through the contracts, it allocated federal and state VR funds totaling \$1.8 million and \$4.6 million, respectively. ACCES also communicated that \$17.4 million was allocated from SED through IDEA funds which were blended into one fund with federal and state VR funds to provide the financial resources to operationalize the 60 MTPs, staff and resources to be provided to students with disabilities. The majority of this funding was used to cover the salaries and other costs of LEA personnel employed in the MTP program who provide services under the contracts and other indirect costs, as well as costs for equipment and purchased services associated with the MTPs. Although the services provided by each MTP varied, three core services were provided for MTP eligible students that included: transition coordination, orientation to vocational rehabilitation and preparation of eligibility documentation. Since the contract language and template is similar across all 60 MTP contracts, for the purpose of the analysis below, RSA has used an example of one MTP contract – Contract between the State Education Department/The University of the State of New York and the New York City (NYC) Board of Education for Bronx Occupational Training Center (OTC), Contract Number C008874 covering the periods of June 1, 2007 through November 30, 2008 and December 1, 2008 through November 30, 2009. The NYC Bronx OTC is part of the Metropolitan School District Category, District 75 and the Bronx OTC served as the school lead representing District 75.

ACCES terminated both the CUNY/LEADS and MTP programs in FY 2010.

Finding:

The CUNY/LEADS and MTP programs were not in compliance with Section 103(b)(6) and 34 CFR 361.49(a)(7) because the services provided were beyond the scope of transition-related consultative and technical assistance services to educational institutions permitted as a services to groups. In addition, the expenditure of VR program funds to support these two programs was not allowable as a procurement of VR services to individuals because the costs were not traceable to the provision of VR services to applicants or individuals determined eligible for VR services, as required by Section 111(a)(1) of the Rehabilitation Act; 34 CFR 361.3 and 34 CFR 361.12; and 34 CFR 80.20(a).

A. Services to Groups: Consultative and Technical Assistance Services

Pursuant to Section 103(b)(6) of the Rehabilitation Act and its implementing regulations at 34 CFR 361.49(a)(7), VR services provided for the benefit of groups of individuals with disabilities may include: “Consultative and technical assistance services **to assist educational agencies** in planning the transition of students with disabilities from school to post-school activities, including employment” (emphasis added). As discussed in Finding 3 above, such services may only be provided to educational agencies and institutions, not to individuals or other entities.

The MOU establishing the CUNY/LEADS program and the contracts implementing the MTPs were developed pursuant to ACCES’s Fiscal Policy 08-01 (see finding 3 above) that governs the provision of “consultative and technical assistance services related to the planning of transition for students with disabilities to postsecondary education and employment activities.” During the on-site portion of the monitoring review, ACCES communicated that Fiscal Policy 08-01 – the policy developed by the agency to implement federal requirements at Section 103(b)(6) of the Rehabilitation Act and 34 CFR 361.49(a)(7) -- was used to implement the CUNY/LEADS program and MTP projects and that it was utilized as a broad fiscal policy to provide funding for experimental services to large groups of individuals with disabilities. However, as described in greater detail below, these written arrangements in their entirety and their implementation clearly demonstrate that these programs were established for the purpose of providing employment-related services to college or high school students, not consultation and technical assistance to the institutions they attended. For example, the CUNY/LEADS MOU at Sections 2.2 and 3.2 and the first paragraph of the MTP RFP #06-033, as well as the Funding, Population to be Served and Program Description sections substantiate that the CUNY/LEADS MOU and MTP contracts were established to provide services to individuals, not for the provision of consultation and technical assistance services to educational agencies. Therefore, ACCES lacked the authority to enter into the CUNY/LEADS and MTP programs under Section 103(b)(6) and 34 CFR 361.49(a)(7).

B. VR Services for Individuals

As a recipient of Title I VR funds, ACCES must maintain procedures to ensure that it administers the VR program in an efficient and effective manner and accounts for the proper expenditure of VR funds (34 CFR 361.12 and 34 CFR 80.20(a)). ACCES must ensure that VR funds are spent solely on the provision of VR services and the administration of the VR program (Section 111(a)(1) of the Rehabilitation Act; 34 CFR 361.3). The federal cost principles require that federal funds be spent solely on allowable and allocable costs. To be allowable, costs must be necessary and reasonable for carrying out the federal program (2 CFR 225, Appendix A, C.1.a). To be considered reasonable, the cost must be one that would be incurred by a prudent person (2 CFR 225, Appendix A, C.2). To be allocable to the VR program, the cost must be proportional to the benefit received by the federal program (2 CFR 225, Appendix A, C.3.a).

To constitute an allowable expenditure as a VR service, the costs must be incurred in the provision of VR services to individuals in accordance with their approved IPEs, pursuant to Section 103(a) of the Rehabilitation Act and 34 CFR 361.48, or to groups of individuals with disabilities, pursuant to Section 103(b) of the Act and 34 CFR 361.49 (Section 7(38) of the

Rehabilitation Act; 34 CFR 361.5(b)(58)). As discussed above, the services provided through the CUNY/LEADS and MTP programs were not authorized as services to groups of individuals with disabilities pursuant to section 103(b)(6) of the Rehabilitation Act and 34 CFR 361.49(a)(7) as ACCES asserted in its fiscal policy and resulting MOUs and contracts. Furthermore, the services provided through the CUNY/LEADS and MTP programs also were beyond the scope of other services to groups authorized under section 103(b) of the Rehabilitation Act and 34 CFR 361.49(a) due to the individualized nature of these services. Therefore, the remainder of this analysis focuses on the provision of services to individuals through the VR program pursuant to section 103(a) of the Rehabilitation Act and 34 CFR 361.48.

Both the MOU establishing the CUNY/LEADS program and the MTP contracts provide for the delivery of VR services listed in Section 103(a) and 34 CFR 361.48. The CUNY personnel employed in the LEADS program, whose costs were covered by Title I VR program funds under the MOU, included 18 CUNY/LEADS counselors and employment specialists, one fiscal staff, a program coordinator and the program director. These persons were responsible for the provision of services identified in Section 3.2 of the MOU, such as assessment, preparation for the development of an IPE, academic counseling, and the coordination of job placement services through the CUNY Career Placement Services office. CUNY/LEADS employees were also responsible for the collection of documentation necessary for the determination of eligibility for VR services.

The MTP personnel employed in the NYC Board of Education for Bronx Occupational Training Center (OTC) – the MTP contract used for illustrative purposes in this finding – were paid under the contract with Title I VR program funds and IDEA funds for June 1, 2007-November 30, 2008 and December 1, 2008-November 30, 2009. Bronx OTC costs included general operating costs, indirect costs, purchased services and personnel costs, such as salaries and fringe benefits for personnel such as a paraprofessional and travel trainer, principal, assistant principal, project director, guidance counselor, teacher(s), and secretary.

These persons were responsible for the supervision, oversight and coordination of program activities to include travel training; training and exploration activities with students; collaboration with teachers and school personnel, families, VR and community partners; and the three core contract services, including transition coordination, orientation to VR and preparation of eligibility documentation.

Although the above-described services would be allowable under the VR program, pursuant to section 103(a) of the Rehabilitation Act and 34 CFR 361.48, neither the CUNY/LEADS MOU nor the MTP contracts clearly required that the individuals to whom these services would be provided be either applicants for or eligible to receive these services under an IPE. Language used in the CUNY/LEADS MOU states that the services could be provided to CUNY students with disabilities prior to their application for VR services or the determination of their eligibility for such services. Section 2.2 reads: “Students participating in this Program (“Participants”) must: (Section 2.2.1) be CUNY students; and (Section 2.2.2) meet the VESID Guidelines on Eligibility...; or (Section 2.2.3) be deemed by CUNY to meet the Guidelines, and be in the assessment process (the “Presumed Eligible Participants”)”. The wording of Section 2.2.3 makes it obvious that ACCESS and CUNY intended to provide services to some students prior to application and eligibility determination based on the presumption by CUNY/LEADS personnel

that these students would be eligible for VR services. In addition, Section 3.2 reads, “CUNY will provide the following services to Participants who are CUNY students with disabilities and/or VESID consumers...” Again, this MOU provision makes it clear that the services provided pursuant to the MOU were not limited to VR applicants and consumers, as would be required to be an allowable VR service pursuant to section 103(a) of the Rehabilitation Act and 34 CFR 361.48.

Language used in the MTP Request for Application Proposal (RFP) #06-033 states in the first paragraph: “VESID is seeking proposals from qualified proponents to provide school-to-work transition services for students with disabilities...” Although the Funding section on page 3 of the RFP states: “The purpose of the RFP is to obtain effective transition services to students with disabilities who meet the federal requirements for VESID Eligibility Certification,” language on page 10 of the RFP indicates that the target population to be served included high school students who were “potentially” eligible for VR services.

In addition, the Program Description Section of the MTP Contract states: “The following services for eligible students who are within two (2) years of exiting high school will be included in contracts resulting from this RFP: transition coordination, orientation to vocational rehabilitation and preparation of eligibility determination.” It is also stated in the same section of the MTP contract that “resulting contracts must...include: I. Development of multi-year work related experiences for students...job development and job coaching may be part of the proposal for pre-eligible VR students with disabilities”; II. Direct assistance with application to, and linkages with, VESID VR services...; III. Parent and student preparation for movement into vocational and other adult services.” Each of these contract provisions makes it clear that the services provided under the MTP contracts, and funded with VR monies, are not limited to individuals who have either applied for or been determined eligible for VR services.

The fact that the MTP contracts are intended to serve non-VR applicants and consumers, as just described, is further reinforced by another contract provision stating that diagnostic vocational evaluations, job development, job coaching and on-the job trainings would not be covered by the MTP contract, but may be purchased separately by VR staff **once a student is determined eligible** (emphasis added). Despite the fact that the MTP contract specifically states that these services will be purchased separately from the MTP contract, the Bronx OTC contract included budgeted costs for purchased services from NYSARC, Inc., NYC Chapter (AHRC) in the amounts of \$90,000 and \$70,000, respectively (MTP Contract, Appendix B, Budget Summary, Periods 1 and 2, Section IV Purchased Services). These purchased services included the purchase of transition services, such as job development, job coaching, case management, employment counseling, on an individual basis as indicated in the transition IEP, and were provided to MTP students with disabilities who may have been, but were not required to be applicants for or consumers of VR services. Finally, on-site discussions during the review process and an electronic communication sent from ACCES to RSA on November 18, 2011, confirmed that, “in terms of eligibility, the RFP identifies that the MTP projects could work with students with disabilities who are within two years of school exit in preparing them for transition, including referral to VR.”

In accordance with the RFP, 60 MTP contracts and implementation of the MTP projects, students with disabilities were eligible to participate in the MTP projects if they were within two

years of exiting the school system and were not required to be applicants for or consumers of the VR program. As such, these students also were not required to have an IPE developed with ACCES to participate in the MTP projects and receive services under these contracts.

Furthermore, the implementation of the CUNY/LEADS and MTP contracts demonstrates that VR services were actually provided to students with disabilities who were not applicants or eligible to receive services under the VR program. The CUNY/LEADS MOU established a minimum target of 3,000 participants over the three-year duration of the program. ACCES provided data during the on-site portion of the review demonstrating that as of November 2009, the CUNY LEADS program had served 1,918 students, of whom only 1,673 were referred to ACCES. Based on these data, at least 245 students received services without becoming applicants for VR services or being determined eligible to receive services under the VR program. ACCES was not able to provide information to document at what stage the 1,673 students, served under the CUNY/LEADS program and referred to the VR program, were actually referred to the VR program. Therefore, it is not clear whether these students received services prior to referral and application status, as was permitted by the CUNY/LEADS MOU.

During the period of the condensed multi-year term of June 1, 2007 through November 30, 2009, the MTP contracts served more students who were not ACCES applicants or determined eligible for ACCES services at the time of service provision than those MTP students who applied for ACCES services or who were determined eligible for ACCES services. Furthermore, school districts and LEAs served individuals through the MTP contracts who were never referred to ACCES.

During the on-site monitoring review, ACCES provided RSA with the MTP Quarterly State Report issued on September 1, 2009 by the Cornell University, ILR School, Employment and Disability Institute. According to the September 2009 Cornell University MTP Quarterly State Report which analyzed ACCES' Case Management System (CaMS) data developed from its tracking of program and fiscal data related to the MTP contracts, the MTP program, as a whole, enrolled 11,836 students, as of July 15, 2009 (Executive Summary, page 2). Of these, only 5,613 applied for VR services between July 1, 2007 and June 30, 2009 per ACCES's CaMS data (VESID Referral, page 47). This meant that 6,223 students received services under the MTP contract who were neither VR applicants nor VR consumers. This data further reinforces the fact that the MTP contracts were not intended to be limited solely to VR applicants and consumers despite the fact that individualized services must only be provided to such persons in accordance with section 103(a) of the Rehabilitation Act and 34 CFR 361.48. The data reported by the September 2009 Cornell University MTP Quarterly State Report substantiates that: 1) MTPs were not designed to serve only ACCES VR applicants or eligible individuals; and 2) the MTPs served more individuals than who applied for or were determined eligible for VR services.

Finally, as with any cost paid with VR funds, the cost must be allowable under the VR program (Section 111(a)(1) of the Rehabilitation Act; 34 CFR 361.3) and traceable to a level of expenditure to ensure that the cost was allowable under the program (34 CFR 361.12; 34 CFR 80.20(a)). During the course of the review, RSA obtained information indicating that no documentation was obtained by ACCES from CUNY or the school districts participating in the MTP to ensure that VR funds were expended on the provision of VR services to ACCES consumers and that could support that the amounts expended under the MOU and MTP contracts

to cover the costs of program personnel were proportional to the benefit the VR program received. Given these deficiencies, the expenditure of VR funds under the CUNY/LEADS and MTP programs was neither allowable under, nor allocable to, the VR program in accordance with federal cost principles at 2 CFR 225 to the extent that those funds were used to serve individuals who were not ACCES consumers or applicants.

In summary, the CUNY/LEADS and MTP programs were not in compliance with Section 103(b)(6) and 34 CFR 361.49(a)(7) because the services provided were beyond the scope of transition-related consultative and technical assistance services to educational institutions. The services provided also were beyond the scope of any other permissible services to group under section 103(b) of the Rehabilitation Act and 34 CFR 361.49(a) because the services provided were individualized services. Given the individualized nature of these services, ACCES would have been able to provide them pursuant to agreements with vendors only to the extent that those services were provided solely to VR applicants and consumers, as required by section 103(a) of the Rehabilitation Act and 34 CFR 361.48. However, as the contracts stated, and the data supported, both the CUNY/LEADS and MTP programs served individuals who were neither applicants nor recipients of VR services. Therefore, these agreements also failed to comply with section 103(a) and 34 CFR 361.48. In addition, the expenditure of VR program funds to support these two programs was not allowable as the costs were not traceable to the provision of VR services to applicants or individuals determined eligible for VR services, as required by Section 111(a)(1) of the Rehabilitation Act; 34 CFR 361.3 and 34 CFR 361.12; and 34 CFR 80.20(a).

Corrective Action 4: ACCES must:

- 4.1 submit a written assurance, within 10 days of receipt of the final monitoring report, that ACCES will no longer provide transition services to individual students with disabilities using the authority provided for under Section 103(b)(6) of the Rehabilitation Act and 34 CFR 361.49(a)(7); that it will only provide VR services to program applicants or individuals determined eligible to receive such services under an approved IPE in accordance with Section 103(a) of the Rehabilitation Act and 34 CFR 361.48; and, that it will develop and maintain procedures that ensure it will obtain sufficient documentation from parties to MOUs, contracts or other forms of agreement demonstrating that VR funds are expended solely for allowable purposes under the VR program in accordance with section 111(a)(1) of the Rehabilitation Act, 34 CFR 361.3, and 2 CFR 225, Appendix A, C.1.a, and that such expenditures are proportional to the benefit received by the VR program pursuant to 2 CFR 225, Appendix A, C.3.a.

5. Unallowable Expenditures – Disability Program Navigators

Legal Requirements:

- Rehabilitation Act—Section 111(a)(1)
- VR Program Regulations—34 CFR 361.3, 34 CFR 361.12 and 34 CFR 361.23
- EDGAR—34 CFR 80.20(a)
- OMB Circulars—2 CFR 225, Appendix A, C.1.a, 2 CFR 225, Appendix A, C.2, and 2 CFR 225, Appendix A, C.3.a

- RSA Guidance—IM-02-13
- Workforce Investment Act—section 121(a)
- U.S. DOL Regulations—20 CFR 662.280
- Federal Register—66 Fed. Reg. 29637 (May 31, 2001)

Finding:

ACCES is not in compliance with Section 111(a)(1) of the Rehabilitation Act; regulations at 34 CFR 361.3, 34 CFR 361.12 and 34 CFR 80.20(a); and federal cost principles at 2 CFR 225, Appendix A, because the agency has expended VR funds for unallowable activities in the one-stop centers. Specifically, ACCES has paid, and is paying, more than its proportional share of the costs of the DPN and DRC positions at the one-stop centers, which is prohibited by the federal cost principles at 2 CFR 225, Appendix A, paragraph C.

ACCES entered into two MOUs with the New York State Department of Labor (NY DOL), to fund disability navigator positions at the one-stop centers.

Through the first MOU, which began July 1, 2008 and ended June 30, 2009, ACCES sub-allocated \$1.2 million of VR program funds to NY DOL to support eight full-time equivalent staff from the existing disability program navigators (DPN) in local workforce investment areas (LWIA) identified by NY DOL. NY DOL was to ensure that the DPNs possessed the appropriate human service qualifications to address information, referral and vocational rehabilitation assessment needs of individuals with disabilities. While ACCES district office managers were invited to participate in the interview process, the LWIAs had the final hiring decision.

Under the second MOU, which began in FY 2011 (scheduled to end in FY 2013), ACCES is to sub-allocate \$900,000 in VR program funds to NY DOL to support four full-time equivalent positions from the existing disability resource coordinators (DRCs) under a Disabilities Employment Initiative (DEI) Program. This MOU was an extension of the work initiated under the first MOU described above and its terms are essentially the same.

Pursuant to the MOUs, ACCES entered into separate contracts with the LWIAs in which the DPNs or DRCs were located. Because these contracts followed the terms of the MOUs, both the MOUs will be used to illustrate the areas of non-compliance set forth in this finding.

As a recipient of federal VR funds, ACCES must maintain procedures to ensure that it administers the VR program in an efficient and effective manner and accounts for the proper expenditure of VR funds (34 CFR 361.12 and 34 CFR 80.20(a)). ACCES must ensure that VR funds are spent solely on the provision of VR services and the administration of the VR program (Section 111(a)(1) of the Rehabilitation Act; 34 CFR 361.3). The federal cost principles require that federal funds be spent on allowable and allocable costs. To be allowable, costs must be necessary and reasonable for carrying out the program (2 CFR 225, Appendix A, paragraph C.1.a). To be considered reasonable, the cost must be one that would be incurred by a prudent person (2 CFR 225, Appendix A, paragraph C.2). To be allocable to the program, the cost must be proportional to the benefit received by the federal program (2 CFR 225, Appendix A, paragraph C.3.a).

Pursuant to the MOUs described, ACCES has provided NY DOL \$1,200,000 and \$300,000, respectively, to fund eight DPN positions, and to cover the first year of funding for four DRC positions. This funding is in addition to the shared one-stop costs provided for in the original MOUs between ACCES and each of the local workforce investment boards (LWIBs). These costs do not constitute shared costs outlined in the MOUs with LWIBs. The DPNs provided, and the DRCs continue to provide, services to all individuals with disabilities that entered the one-stop system, many of whom are not VR applicants or consumers and/or would not be eligible for VR services. As stated above, both MOUs between ACCES and NY DOL allowed for the provision of services to individuals with disabilities generally; there was no specific reference to serving ACCES consumers. Therefore, the VR expenditures incurred in funding the DPN and DRC positions would not be an allowable expenditure for services provided under or in the administration of the VR program, as is required by Section 111(a)(1) of the Rehabilitation Act and 34 CFR 361.3. As such, these expenditures also would not be allowable under or allocable to the VR program in accordance with the federal cost principles (2 CFR Part 225, Appendix A, paragraph C).

Furthermore, as the DSU for the VR program, ACCES is a required partner in the workforce development system, pursuant to section 121(a) of WIA. As a required workforce partner, ACCES must carry out certain functions in a manner that is consistent with the requirements of the VR program and Title I of WIA, including providing core services at the one-stop centers, using a portion of its program funds to provide the core services, and entering into a Memorandum of Understanding with the LWIBs (through the Department of Labor) that describes ACCES' role in the one-stop centers (34 CFR 361.23). Despite the requirement that ACCES must participate in the funding and delivery of core services in the one-stop centers, DOL's regulations governing the one-stop system (20 CFR 662.280) and DOL's published guidance on cost-allocation at the one-stop centers (66 Fed. Reg. 29637 (May 31, 2001)) make it clear that the cost-sharing must be consistent with the VR program's requirements and must be proportional to the benefit received by the VR program at the one-stop center (see also RSA-IM-02-13). In particular, 20 CFR 662.280 states: "... [T]he resources of each partner may only be used to provide services that are authorized and provided under the partner's program to individuals who are eligible under such program." These requirements are consistent with the federal cost principles set forth at 2 CFR 225, Appendix A, paragraph C, in that they all require that no program bear a disproportionate share of the costs due to the inability of another program to pay its fair share.

The pivotal point in determining whether the cost-sharing allocation is appropriate is determining whether the program received a benefit from its participation in the one-stop centers. Cost allocation methodologies must result in an equitable distribution of the shared costs, correspond to the types of costs being allocated, be efficient to use, and be consistently applied. During the course of the on-site review, ACCES provided documentation demonstrating that it is an equal partner in the one-stop workforce development system as required at section 121(b)(1)(B)(iv) of WIA. ACCES provided the original required MOUs between ACCES and the LWIBs that demonstrated ACCES provided VR expenditures proportionate to the benefit received by the VR system.

However, the MOUs between ACCES and NY DOL that funded the DPN and DRC positions, which were entered into in addition to the required MOUs with the LWIBs, did not allocate the

costs of the positions among any other one-stop partners other than ACCES. As such, the cost allocation was in excess of the benefit received by the VR program and was not an equitable distribution of costs that must be shared among the partners at the one-stop centers, which is prohibited by the federal cost principles at 2 CFR 225, Appendix A, paragraph C. By using VR funds to pay more than its fair share of these one-stop costs, ACCES did not administer the VR program in such a manner that ensures the proper accounting of all VR funds, as required by 34 CFR 361.12 and 34 CFR 80.20(a).

Corrective Action 5: ACCES must:

- 5.1 cease using VR funds for costs that are not allowable under the VR program, including costs associated with the funding of DPN and DRC positions at the one-stop centers;
- 5.2 submit a written assurance within ten (10) days of the issuance of the final monitoring report that ACCES will use Title I VR funds solely for the provision of VR services or the administration of the VR program, as required by Section 111(a)(1) of the Rehabilitation Act and 34 CFR 361.3; ACCES must also assure that it will administer the VR program in a manner that ensures the proper usage and accounting of VR funds for allowable expenditures, as required by 34 CFR 361.12 and 34 CFR 80.20(a); finally, ACCES must assure VR funds used toward paying ACCES' share of the one-stop costs are proportional to the benefit received by the VR program and are consistent with regulatory requirements and DOL's and RSA's guidance on this matter;
- 5.3 collaborate with NY DOL and the one-stop partners to implement procedures for the development of a method or methods to determine ACCES' appropriate share of one-stop center operating costs that are consistent with the requirements of the VR program regulations, EDGAR, OMB cost principles, and WIA. These cost sharing methodologies must ensure that:
 - A. the costs allocated to ACCES are allowable under the VR program;
 - B. the computational methodology of allocating costs, as well as the basis used for their distribution, are equitable to the VR program;
 - C. the costs identified as shared are common to all partners;
 - D. ACCES receives a proportional benefit from each cost allocated to it;
 - E. the one-stop center cost-sharing agreement addresses each partner's financial participation in allocated common costs pursuant to 34 CFR 361.23(a)(2);
 - F. the MOU or other cost-sharing agreement is based on reasonable, supportable, and valid data and is auditable; and
 - G. the cost allocation adheres to the federal cost principles set forth at 2 CFR 225.

6. Tracking Expenditures and Monitoring Grant Activities

Legal Requirements:

- VR Program Regulations—34 CFR 361.12
- EDGAR—34 CFR 80.20(a) and 34 CFR 80.40(a)

Background:

ACCES entered into at least five agreements with other agencies of the state of New York to implement programs to improve employment outcomes. Because both parties to these agreements were state agencies, ACCES entered into a MOU with each, rather than a contract.

In addition to the MOUs, ACCES entered into contracts to implement the Model Transition Program (MTP). ACCES executed 60 contracts with local education agencies (LEAs) public school districts, individual schools, and Boards of Cooperative Educational Services (BOCES) to provide transition services to students with disabilities who were within two years of exiting high school. Amounts funded, budget expenditure amounts, and operating expenses differed from contract to contract. RSA reviewed six of the 60 of the contracts.

At the time of RSA's review, the New York Department of Labor-Disability Employment Initiative MOU was outstanding. The remaining four MOUs and the MTP contracts either expired or were terminated. The five MOUs and six MTP contracts presented similar issues that are addressed in the finding below.

Finding:**A. Tracking of Expenditures**

ACCES is not in compliance with 34 CFR 361.12 and 34 CFR 80.20(a), because ACCES does not utilize methods of administration to ensure the proper administration of the VR program and accurate accounting of VR funds, including the ability to track the expenditure of funds to the VR program.

The MOUs and the MTP contracts contain schedules which provide the dates on which ACCES transferred Title I funds to the recipient agency. These schedules generally allowed for two or more payments during the duration of the contract. The agreements required the party to the agreement to submit quarterly expenditure reports to ACCES, indicating the amount spent. However, ACCES did not ensure receipt of these expenditure reports and was unable to provide copies to RSA. The payment of funds prior to the receipt of quarterly expenditure reports or invoices, as required in the contract/MOU, precludes ACCES from knowing whether funds are spent in the provision of VR services to applicants or individuals determined eligible for VR services. Therefore, ACCES lacks the controls necessary to ensure proper administration of the VR program.

The review of invoices may permit ACCES to process payments. However, it does not provide ACCES with information necessary to ensure compliance with federal requirements. ACCES must ensure fiscal controls permit the tracking of expenditures necessary to ensure that the funds are not used in violation of restrictions and prohibitions of applicable statutes in accordance with 34 CFR 80.20(a)(2).

B. Monitoring of Grant-Supported Activities

ACCES is not in compliance with 34 CFR 80.40(a) because ACCES does not monitor MOUs and contracts to ensure compliance with applicable federal requirements and performance goals.

ACCES did not monitor the MOU and MTP agreements to ensure adherence to budgets or compliance with agreement requirements, such as submission of quarterly expenditure reports. Absent monitoring procedures, or monitoring of contractor activities, ACCES could not assure compliance with federal requirements.

Additionally, specific performance goals were not listed in the MOUs or contracts; rather the agreements provided general programmatic objectives. ACCES staff reported that Cornell University gathered data from the recipients of funds under the MTP contracts and prepared extensive data reports. However, these after-the-fact reports were not indicators of contract performance. ACCES does not monitor contract performance, as required, to ensure compliance with performance goals.

Corrective Action 6: ACCES must:

- 6.1 submit a written assurance to RSA within ten (10) days of receipt of the final monitoring report that it will comply with 34 CFR 361.12, 34 CFR 80.20(a), and 34 CFR 80.40(a), to monitor supported activities to assure compliance with applicable federal requirements and that performance goals are being achieved; and,
- 6.2 develop and implement procedures to:
 - A. monitor the programmatic and fiscal aspect of the activities and services provided by state agencies and contractors receiving Title I funds to ensure compliance with federal requirements;
 - B. ensure that ACCES staff approve payment only after verifying that accurate invoices/quarterly expenditure reports have been received and that payments are allowable per contract/MOU budget
 - C. ensure fiscal controls permit the tracking of expenditures necessary to ensure that the funds are not used in violation of restrictions and prohibitions of applicable statutes in accordance with 34 CFR 80.20(a)(2).

APPENDIX A: AGENCY RESPONSE

Section 4: Results of Prior Monitoring Activities

ACCES requests additional technical assistance described below to enable it to carry out the following goals identified in the FY 2007 monitoring report.

Goals

Goal 1: Beginning with FY 2008, ACCES will reduce the VR Program funds carried over by \$20 million annually until the carryover balance is less than 20 percent of the federal funds made available to the state each FY.

Additional Technical Assistance Requested: ACCES does not request technical assistance.

As the report notes, ACCES has taken actions to reduce the carryover of VR program funds to less than 20 percent. The current increase in carryover is attributable to the funds received under the American Recovery and Reinvestment Act (ARRA). ACCES-VR's goal to increase the number of individuals made eligible will reduce the carryover through the regular provision of services.

Goal 2: For FY 2007, ACCES goal is to achieve a 3 percent increase in the number of individuals with employment outcomes from FY 2006 performance level.

Additional Technical Assistance Requested: ACCES does not request technical assistance.

Goal 3: Goal: Improve the hourly earnings of ACCES consumers as described in ACCES's Program Improvement Plan.

Additional Technical Assistance Requested: ACCES does not request technical assistance.

Goal 4: Internal and external quality assurance systems will be on going, rigorous, and useful to both ACCES staff and its consumers.

Additional Technical Assistance Requested: ACCES does not request technical assistance.

As the report notes, ACCES has instituted a number of initiatives to enhance internal and external quality assurance systems. ACCES will further develop those quality assurance systems to ensure the same level of services is provided for any services procured via Memoranda of Understanding.

Section 5: Focus Areas

Transition Services and Employment Outcomes for Youth with Disabilities

5.B.1 Employment Outcomes for Transition-Age Youth and the Provision of Services

Recommendation 5.B.1: RSA recommends that ACCES:

- 5.B.1.1 evaluate service delivery and employment outcome trends, to include the quality of employment outcomes of transition-age youths to determine the factors contributing to low performance;
- 5.B.1.2 develop and implement a strategy or strategies to improve service delivery, employment outcomes and the employment rate for transition-age youths to improve service delivery;
- 5.B.1.3 analyze the differences regarding service provision identified in this observation to properly evaluate the reasons for the discrepancies between ACCES' RSA-911 figures and services provided;
- 5.B.1.4 provide ACCES staff with necessary training related to case management system edits and procedures to code, record and report accurate information; and
- 5.B.1.5 evaluate the review process and case management reports used by supervisors to ensure compliance with appropriate coding.

Agency Response: ACCES agrees with these recommendations. Specific goals to improve performance for youth are included in the VR State Plan and will continue to be a priority area for ACCES-VR. Specific strategies for improvement are developed through a broad-based commitment at all levels of ACCES-VR to plan, implement and modify innovative approaches to better serve transition age youth.

Technical Assistance: ACCES does not request technical assistance.

Section 6: Compliance Findings and Corrective Actions

1. Individualized Plan for Employment (IPE)

Corrective Action 1: ACCES must:

- 1.1 cease the untimely development of IPEs;
- 1.2 provide written assurance within 10 days of receipt of the final monitoring report that the agency will ensure that all IPEs are developed within the time period that ACCES has established as its state standard pursuant to 34 CFR 361.45(e); and
- 1.3 submit the actions that ACCES will take, including timelines, to ensure that IPEs are developed in a timely manner and within 90 days of eligibility determination (e.g., in accordance with the agency's established timeline developed pursuant to Section 101(a)(9) of the Rehabilitation Act and its implementing regulations at 34 CFR 361.45(e)).

Agency Response: ACCES will take action to ensure that IPEs are developed in a timely manner while maintaining that the VR counselor and individual engage in developing a quality employment plan.

Technical Assistance: To be determined.

2. Agreement between the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) and the Office of Elementary, Middle and Secondary Education (EMSE)

Corrective Action 2: ACCES must:

- 2.1 submit a written assurance to RSA within ten days of the issuance of the final monitoring report that ACCES will ensure that the SEA agreement with the Office of P-12 Education will be updated and revised to reflect the appropriate entities involved in the formal interagency agreement and to comply with the requirements at Section 101(a)(11)(D) of the Rehabilitation Act and 34 CFR 361.22 (b); and
- 2.2 submit the revised SEA formal interagency agreement between ACCES and the Office of P-12 Education for RSA's review as part of ACCES' corrective actions associated with the FY 2012 Section 107 Monitoring Review.

Agency Response: ACCES agrees and has initiated a working draft in dialogue with Office of P-12 Education.

Technical Assistance: RSA has already provided sample agreements from other states which ACCES will review in revising the NYS agreement.

3. Consultation and Technical Assistance related to Transition

Corrective Action 3: ACCES must:

- 3.1 revise its Fiscal Policy FIS- 08-01 to be in compliance with the scope of Section 103(b)(6) of the Rehabilitation Act and 34 CFR 361.49(a)(7), stating that consultative and technical assistive services to educational agencies and institutions does not include the provision of VR services to other entities or individuals.

Agency Response: ACCES has rescinded Fiscal Policy FIS-08-01 effective immediately.

Technical Assistance: ACCES will request technical assistance when designing a new policy involving both any services to groups and any consultative and technical assistive services to educational agencies and institutions.

4. Arrangements Developed Pursuant to FIS 08-01

Corrective Action 4: ACCES must:

- 4.1 submit a written assurance, within 10 days of receipt of the final monitoring report, that ACCES will no longer provide transition services to individual students with disabilities using the authority provided for under Section 103(b)(6) of the Rehabilitation Act and 34 CFR 361.49(a)(7); that it will only provide VR services to program applicants or individuals determined eligible to receive such services under an approved IPE in accordance with Section 103(a) of the Rehabilitation Act and 34 CFR 361.48; and, that it will develop and maintain procedures that ensure it will obtain sufficient documentation from parties to MOUs, contracts or other forms of agreement demonstrating that VR funds are expended

solely for allowable purposes under the VR program in accordance with section 111(a)(1) of the Rehabilitation Act, 34 CFR 361.3, and 2 CFR 225, Appendix A, C.1.a, and that such expenditures are proportional to the benefit received by the VR program pursuant to 2 CFR 225, Appendix A, C.3.a.

Agency Response: ACCES agrees and is no longer providing services under the authority of 34 CFR 361.49(a)(7). ACCES is currently only providing individualized services to applicants and eligible individuals under the authority of 34 CFR 361.48. ACCES policies and procedures related to assessment, eligibility and IPE development are all individually determined through the work of the VR counselor with the person receiving services. All services are purchased through individual authorizations and IPEs.

Technical Assistance: As stated above, ACCES will request technical assistance when designing any new policy involving both any services to groups and any consultative and technical assistive services to educational agencies and institutions. This will include ensuring sufficient documentation from parties to MOUs, contracts or other forms of agreement demonstrating that VR funds are expended solely for allowable purposes under the VR program.

5. Unallowable Expenditures – Disability Program Navigators

Corrective Action 5: ACCES must:

- 5.1 cease using VR funds for costs that are not allowable under the VR program, including costs associated with the funding of DPN and DRC positions at the one-stop centers;
- 5.2 submit a written assurance within ten (10 days) of the issuance of the final monitoring report that ACCES will use Title I VR funds solely for the provision of VR services or the administration of the VR program, as required by Section 111(a)(1) of the Rehabilitation Act and 34 CFR 361.3; ACCES must also assure that it will administer the VR program in a manner that ensures the proper usage and accounting of VR funds for allowable expenditures, as required by 34 CFR 361.12 and 34 CFR 80.20(a); finally, ACCES must assure VR funds used toward paying ACCES' share of the one-stop costs are proportional to the benefit received by the VR program and are consistent with regulatory requirements and DOL's and RSA's guidance on this matter;
- 5.3 collaborate with NY DOL and the one-stop partners to implement procedures for the development of a method or methods to determine ACCES' appropriate share of one-stop center operating costs that are consistent with the requirements of the VR program regulations, EDGAR, OMB cost principles, and WIA. These cost sharing methodologies must ensure that:
 - A. the costs allocated to ACCES are allowable under the VR program;
 - B. the computational methodology of allocating costs, as well as the basis used for their distribution, are equitable to the VR program;
 - C. the costs identified as shared are common to all partners;
 - D. ACCES receives a proportional benefit from each cost allocated to it;
 - E. the one-stop center cost-sharing agreement addresses each partner's financial participation in allocated common costs pursuant to 34 CFR 361.23(a)(2);

- F. the MOU or other cost-sharing agreement is based on reasonable, supportable, and valid data and is auditable; and
- G. the cost allocation adheres to the federal cost principles set forth at 2 CFR 225.

Agency Response: ACCES agrees even though we offer that these efforts were programmatically consistent with the intent of Section 361.23(b), specifically promoting equal, effective and meaningful participation by individuals with disabilities in the One-Stop service delivery system by increasing program accessibility. The DEI collaboration is proving to be a platform for the development of VR and One Stop cooperative customer service features related to referral, assessment, work incentives advisement and job placement. These are areas where it is well documented that individuals with disabilities face tremendous barriers in entering the workforce. The collaborative approach that brings complementary, non-duplicative resources to the individual increases the probability of individuals entering and succeeding in employment.

ACCES has guidelines and standards for developing local memorandums of understanding with local workforce investment areas that are consistent with federal requirements, including a methodology for shared costs that are common to all partners and the demonstration of proportional benefits. ACCES currently uses these MOU methods for local level infrastructure funding with local workforce investment areas and will limit any future collaboration with DOL and one-stop partners to the use of these methods.

Technical Assistance: ACCES plans to continue to pursue the collaboration with DOL on the Disability Employment Initiative without the partial funding under the MOU. Both DOL and ACCES have created data elements to capture common customers and track services and outcomes. ACCES will request technical assistance as needed.

6. Tracking Expenditures and Monitoring Grant Activities

Corrective Action 6: ACCES must:

- 6.1 submit a written assurance to RSA within ten (10) days of receipt of the final monitoring report that it will comply with 34 CFR 361.12, 34 CFR 80.20(a), and 34 CFR 80.40(a), to monitor supported activities to assure compliance with applicable federal requirements and that performance goals are being achieved; and,
- 6.2 develop and implement procedures to:
 - A. monitor the programmatic and fiscal aspect of the activities and services provided by state agencies and contractors receiving Title I funds to ensure compliance with federal requirements;
 - B. ensure that ACCES staff approve payment only after verifying that accurate invoices/quarterly expenditure reports have been received and that payments are allowable per contract/MOU budget
 - C. ensure fiscal controls permit the tracking of expenditures necessary to ensure that the funds are not used in violation of restrictions and prohibitions of applicable statutes in accordance with 34 CFR 80.20(a)(2).

Agency Response:

6.2A ACCES agrees. ACCES will further develop its quality assurance systems to ensure that the same levels of controls are instituted for all services procured, including those procured via a Memorandum of Understanding, as are currently provided for all direct consumer services.

ACCES has always identified a program coordinator for these projects whose responsibility is to monitor the project implementation ensuring that activities are in compliance with federal requirements and that VR consumers benefit from any services or activities in terms of achieving an employment outcome. This role will be reinforced and strengthened in the event of any future interagency collaboration using VR funds.

6.2B ACCES agrees. ACCES is making payments only after the receipt of the appropriate fiscal documentation.

6.2C ACCES agrees.

Technical Assistance: ACCES will request technical assistance when designing any new MOU's involving interagency collaboration where VR funds are utilized.

APPENDIX B: LEGAL REQUIREMENTS

This Appendix contains the full text of each legal requirement cited in Section 6 of this report.

Rehabilitation Act of 1973, as Amended

Section 7 For the purposes of this Act:

(38) Vocational rehabilitation services. The term "vocational rehabilitation services" means those services identified in section 103 which are provided to individuals with disabilities under this Act.

Section 101 State Plans

(a) Plan Requirements

(9) Individualized plan for employment

(A) Development and implementation

The State plan shall include an assurance that an individualized plan for employment meeting the requirements of section 102(b) will be developed and implemented in a timely manner for an individual subsequent to the determination of the eligibility of the individual for services under this title, except that in a State operating under an order of selection described in paragraph (5), the plan will be developed and implemented only for individuals meeting the order of selection criteria of the State.

(B) Provision of services

The State plan shall include an assurance that such services will be provided in accordance with the provisions of the individualized plan for employment.

....

(11) Cooperation, collaboration, and coordination

(D) Coordination with education officials

The State plan shall contain plans, policies, and procedures for coordination between the designated State agency and education officials responsible for the public education of students with disabilities, that are designed to facilitate the transition of the students with disabilities from the receipt of educational services in school to the receipt of vocational rehabilitation services under this title, including information on a formal interagency agreement with the State educational agency that, at a minimum, provides for--

- (i) consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;
- (ii) transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and completion of their individualized education programs under section 614(d) of the Individuals with Disabilities Education Act;
- (iii) the roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and
- (iv) procedures for outreach to and identification of students with disabilities who need the transition services.

Section 103 Vocational Rehabilitation Services

(a) Vocational Rehabilitation Services for Individuals

Vocational rehabilitation services provided under this title are any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, including--

- (1) an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;
- (2) counseling and guidance, including information and support services to assist an individual in exercising informed choice consistent with the provisions of section 102(d);
- (3) referral and other services to secure needed services from other agencies through agreements developed under section 101(a)(11), if such services are not available under this title;
- (4) job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;
- (5) vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials, except that no training services provided at an institution of higher education shall be paid for with funds under this title unless maximum efforts have been made by the designated State unit and the individual to secure grant assistance, in whole or in part, from other sources to pay for such training;
- (6) to the extent that financial support is not readily available from a source (such as through health insurance of the individual or through comparable services and benefits consistent with

section 101(a)(8)(A)), other than the designated State unit, diagnosis and treatment of physical and mental impairments, including--

(A) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition that constitutes a substantial impediment to employment, but is of such a nature that such correction or modification may reasonably be expected to eliminate or reduce such impediment to employment within a reasonable length of time;

(B) necessary hospitalization in connection with surgery or treatment;

(C) prosthetic and orthotic devices;

(D) eyeglasses and visual services as prescribed by qualified personnel who meet State licensure laws and who are selected by the individual;

(E) special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the treatment of individuals with end-stage renal disease; and

(F) diagnosis and treatment for mental and emotional disorders by qualified personnel who meet State licensure laws;

(7) maintenance for additional costs incurred while participating in an assessment for determining eligibility and vocational rehabilitation needs or while receiving services under an individualized plan for employment;

(8) transportation, including adequate training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service described in this section and needed by the individual to achieve an employment outcome;

(9) on-the-job or other related personal assistance services provided while an individual is receiving other services described in this section;

(10) interpreter services provided by qualified personnel for individuals who are deaf or hard of hearing, and reader services for individuals who are determined to be blind, after an examination by qualified personnel who meet State licensure laws;

(11) rehabilitation teaching services, and orientation and mobility services, for individuals who are blind;

(12) occupational licenses, tools, equipment, and initial stocks and supplies;

(13) technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(14) rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;

(15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the individualized plan for employment;

(16) supported employment services;

(17) services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome; and

(18) specific post-employment services necessary to assist an individual with a disability to, retain, regain, or advance in employment.

(b) Vocational Rehabilitation Services for Groups of Individuals

Vocational rehabilitation services provided for the benefit of groups of individuals with disabilities may also include the following:

(6) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

Section 111

(a)(1) Except as provided in paragraph (2), from each State's allotment under this part for any fiscal year, the Commissioner shall pay to a State an amount equal to the Federal share of the cost of vocational rehabilitation services under the plan for that State approved under section 101, including expenditures for the administration of the State plan.

VR Program Regulations

361.3 Authorized activities.

The Secretary makes payments to a State to assist in—

- (a) The costs of providing vocational rehabilitation services under the State plan; and
- (b) Administrative costs under the State plan.

361.5 Applicable definitions.

(b) Other definitions. The following definitions also apply to this part:

(58) Vocational rehabilitation services —

- (i) If provided to an individual, means those services listed in §361.48; and
- (ii) If provided for the benefit of groups of individuals, also means those services listed in §361.49.

34 CFR 361.12

The State plan must assure that the State agency, and the designated State unit if applicable, employs methods of administration found necessary by the Secretary for the proper and

efficient administration of the plan and for carrying out all functions for which the State is responsible under the plan and this part. These methods must include procedures to ensure accurate data collection and financial accountability.

34 CFR 361.22

- (b) *Formal interagency agreement.* The State plan must include information on a formal interagency agreement with the State educational agency that, at a minimum, provides for—
- (1) Consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;
 - (2) Transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and completion of their individualized education programs (IEPs) under section 614(d) of the Individuals with Disabilities Education Act;
 - (3) The roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and
 - (4) Procedures for outreach to and identification of students with disabilities who are in need of transition services. Outreach to these students should occur as early as possible during the transition planning process and must include, at a minimum, a description of the purpose of the vocational rehabilitation program, eligibility requirements, application procedures, and scope of services that may be provided to eligible individuals.

34 CFR 361.45

- (a) *General requirements.* The State plan must assure that—
- (1) An individualized plan for employment (IPE) meeting the requirements of this section and 361.46 is developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services or, if the designated State unit is operating under an order of selection in accordance with 361.36, for each eligible individual to whom the State unit is able to provide services; and
 - (2) Services will be provided in accordance with the provisions of the IPE.
- (e) *Standards for developing the IPE.* The designated State unit must establish and implement standards for the prompt development of IPEs for the individuals identified under paragraph (a) of this section, including timelines that take into consideration the needs of the individuals.

34 CFR 361.48

As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, the designated State unit must ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

- (a) Assessment for determining eligibility and priority for services by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with 361.42.
- (b) Assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with 361.45.
- (c) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with 361.52.
- (d) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system, in accordance with 361.23, 361.24, and 361.37, and to advise those individuals about client assistance programs established under 34 CFR part 370.
- (e) In accordance with the definition in 361.5(b)(40), physical and mental restoration services, to the extent that financial support is not readily available from a source other than the designated State unit (such as through health insurance or a comparable service or benefit as defined in 34 CFR 361.5(b)(10)).
- (f) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.
- (g) Maintenance, in accordance with the definition of that term in 361.5(b)(35).
- (h) Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the definition of that term in 361.5(b)(57).
- (i) Vocational rehabilitation services to family members, as defined in 361.5(b)(23), of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.
- (j) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel.
- (k) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.
- (l) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.
- (m) Supported employment services in accordance with the definition of that term in 34 CFR 361.5(b)(54)
- (n) Personal assistance services in accordance with the definition of that term in 361.5(b)(39).
- (o) Post-employment services in accordance with the definition of that term in 361.5(b)(42).
- (p) Occupational licenses, tools, equipment, initial stocks, and supplies.
- (q) Rehabilitation technology in accordance with the definition of that term in 361.5(b)(45), including vehicular modification, telecommunications, sensory, and other technological aids and devices.

- (r) Transition services in accordance with the definition of that term in 361.5(b)(55).
- (s) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.
- (t) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

34 CFR 361.49

- (a) The designated State unit may also provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:
 - (7) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

Education Department General Administrative Regulations (EDGAR)

34 CFR 80.20 Standards for financial management systems.

- (a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to:
 - (1) Permit preparation of reports required by this part and the statutes authorizing the grant, and
 - (2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

34 CFR 80.40 Monitoring and reporting program performance.

- (a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

OMB circulars as cited in the CFR

2 CFR 225

Appendix A. *Basic Guidelines*

- 1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:
 - a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.

- b. Be allocable to Federal awards under the provisions of 2 CFR part 225.
 - c. Be authorized or not prohibited under State or local laws or regulations.
 - d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
 - e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
 - f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
 - g. Except as otherwise provided for in 2 CFR part 225, be determined in accordance with generally accepted accounting principles.
 - h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
 - i. Be the net of all applicable credits.
 - j. Be adequately documented.
2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded. In determining reasonableness of a given cost, consideration shall be given to:
- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.
 - b. The restraints or requirements imposed by such factors as: Sound business practices; arm's-length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.
 - c. Market prices for comparable goods or services.
 - d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.
 - e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.
3. Allocable costs.
- a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.
 - b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.
 - c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in 2 CFR part 225 may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons.

- d. Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Appendices C, D, and E to this part.

RSA Issuances

RSA Guidance-IM-02-13

RSA Information Memorandum 02-13, p.59 and 62 (February 28, 2002) states:

VR Cost Allocation Methods Must:

- 1) Result in an equitable distribution of the shared costs;
- 2) Correspond to the types of costs being allocated;
- 3) Be efficient to use and consistently applied;
- 4) Be consistent with generally accepted accounting principles (GAAP);
- 5) Meet OMB and EDGAR requirements; and,
- 6) Be accepted by each partners independent auditors to pass A-133 audits.

It is not sufficient to inspect the information supporting the agency's financial contribution to the One-Stop or the State's system without reviewing documents supporting the allocation principles used for all partners.

The pivotal point in cost-sharing or allocation is whether a benefit is received by the One-Stop partner, or specifically by the VR agency. Care should be taken when evaluating costs determined to be of benefit to the VR agency by the local boards or other partners whose perceptions of receiving a benefit may be broader than is appropriate.

Workforce Investment Act

Section 121(b)(1)(A) of WIA states:

(b) One-Stop Partners.--

(1) Required partners.--

(A) In general.--Each entity that carries out a program or activities described in subparagraph (B) shall--

- (i) make available to participants, through a one-stop delivery system, the services described in section 134(d)(2) that are applicable to such program or activities; and
- (ii) participate in the operation of such system consistent with the terms of the memorandum described in subsection (c), and with the requirements of the Federal law in which the program or activities are authorized.

U.S. Department of Labor Regulations

20 CFR 662.280

The resources of each partner may only be used to provide services that are authorized and provided under the partner's program to individuals who are eligible under such program.

Federal Register

DOL's "Resource Sharing for Workforce Investment Act One-Stop Centers: Methodologies for Paying or Funding Each Partner Program's Fair Share of Allocable One-Stop Costs," 66 Fed. Reg. 29637, 29643 (May 31, 2001), in pertinent part, states:

Any methodology used must:

- 1) Result in an equitable distribution of costs and not result in any partner paying a disproportionate share of the shared One-Stop costs;
- 2) Not result in any partner paying a disproportionate share of the common costs;
- 3) Correspond to the types of costs being allocated;
- 4) Be efficient to use; and,
- 5) Be consistently applied over time.